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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

No. 5, ORIGINAL.

THE STATE OF IOWA, COMPLAINANT,

vs.

THE STATE OF ILLINOIS.

IN EQUITY.

ON BILL AND CROSS-BILL.

FILED NOVEMBER 17, 1891.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

No. 11, ORIGINAL.

THE STATE OF IOWA, COMPLAINANT,

vs.

THE STATE OF ILLINOIS.

IN EQUITY.

ON BILL AND CROSS-BILL.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., FEBRUARY 8, 1892.

1 Supreme Court of the United States, October Term, 1891.

At the Capitol of the United States, in the city of Washington and District of Columbia, being the present seat of the National Government of the United States, on the second Monday of October (being the twelfth day of the same month), in the year of our Lord one thousand eight hundred and ninety-one, and of the Independence of the United States the one hundred and sixteenth, the Supreme Court of the United States met agreeably to law.

And afterwards, to wit, on the 17th day of November, A. D. 1891, a motion for leave was filed in the words and figures following, viz:

2 In the Supreme Court of the United States.

THE STATE OF IOWA, Complainant,
vs.
THE STATE OF ILLINOIS, Defendant.

Motion for Leave.

Comes now Jno. Y. Stone, att'y gen'l of the State of Iowa, — for leave to file the following papers in the foregoing-entitled cause, those filed by the State of Illinois being at the request of the att'y gen'l of that State:

1. Bill of complaint of the State of Iowa.
2. Answer of the State of Illinois.
3. Cross-bill of the State of Illinois.
4. Reply of the State of Iowa.
5. Answer of Iowa to respondent's cross-bill.

And it is further moved that, inasmuch as this is a suit to determine a boundary between two States, involving questions relating to taxation and the collection of revenue between States, it be advanced for hearing at an early day, both parties appearing and consenting thereto, as shown in the bills and answers herein.

JNO. Y. STONE,
Att'y Gen'l of Iowa.

(Endorsed:) Supreme Court U. S. 1891, October term. No. 11, original. The State of Iowa, complainant, *vs.* The State of Illinois.

3 *Motion for Leave to File Bill, Answer, Cross-Bill, Answer to Cross-Bill, & Replication & to Assign Cause for Argument. Filed Nov'r* 17, 1891.

4 And on the same day, to wit, on the 17th day of November, A. D. 1891, the following entry appears of record, viz:

THE STATE OF IOWA, Complainant,
vs.
THE STATE OF ILLINOIS. } 11, Original.

On motion of Mr. John Y. Stone, of counsel for the complainant,

leave is hereby granted to file the bill of complaint, answer, cross-bill, answer to cross-bill, and replication of the complainant to answer of defendant herein.

Mr. Stone also submitted to the consideration of the court a motion to fix a day for the argument of the case.

5 And on the same day, to wit, on the 17th day of November, A. D. 1891, an appearance of counsel for the complainant was filed in the words and figures following, viz:

6 Supreme Court of the United States, October Term, 1891.

THE STATE OF IOWA, Complainant,
vs.
THE STATE OF ILLINOIS. } No. 11, Orig'l.

The clerk will enter my appearance as counsel for the complainant.

JNO. Y. STONE,
Att'y Gen'l of Iowa.

☞NOTE.—Must be signed by a member of the bar of Supreme Court United States. Individual and not firm names must be signed.

(Endorsed:) Supreme Court U. S., October term, 1891. No. 11, original. Appearance for compl't. Filed Nov. 17, 1891.

7 And on the same day, to wit, on the 17th day of November, A. D. 1891, a bill of complaint was filed in the words and figures following, viz:

8 In the Supreme Court of the United States.

THE STATE OF IOWA, Complainant,
vs.
THE STATE OF ILLINOIS, Defendant. } Equity. Bill to Establish Boundary.

To the judges of the Supreme Court of the United States:

Par. 1. Complainant, The State of Iowa, by its attorney general, complaining, shows to this honorable court that said State of Iowa is one of the States comprising the United States of America, and said State of Illinois is another of said States.

Par. 2. That prior to the treaty between England, France, and Spain, in 1763, and at the time of said treaty the territory now comprising the State of Iowa was under the dominion of France, and the territory now comprising the State of Illinois was under the dominion of England (Great Britain); that by that treaty the middle of the river Mississippi was made the boundary lines between the British and French possessions in North America.

Par. 3. That by the treaty of Paris, between Great Britain and the United States, the territory comprising the State of Illinois passed to the United States, and by the purchase of the Louisiana Territory

by the United States from France the territory comprising the State of Iowa passed to the United States.

9 Par. 4. That the boundary between the territory comprising the States of Illinois & Iowa remained the middle of the river Mississippi, as fixed by said treaty of 1763.

Par. 5. That by the act of Congress of April 18th, 1818, known as the act "enabling the people of Illinois to form a State constitution," the northern and western boundaries of Illinois *is* defined as follows: Starting in the middle of Lake Michigan at north latitude 42° 30′, "thence west to the middle of the Mississippi river and thence down along the middle of that river to its confluence with the Ohio river," and the constitutions of Illinois of 1818, 1848, and 1870 define said boundaries the same; yet said State of Illinois and its several municipalities bordering on said Mississippi river claim the right to and do assess and tax as in Illinois all bridges and other structures in said river from the Illinois shore to the middle of the steamboat channel or channel of said river usually traversed by steam and other crafts in carrying the commerce of said river regardless of whether said channel is east or west of the middle of the main body or arm of said river; that said authorities in Illinois value, assess, and tax as in Illinois the bridge of the Keokuk & Hamilton Bridge Company across said river from Keokuk, Iowa, to Island No. 4, in section 30, T. 5 N., R. 8 W., in Hancock county, Illinois, from the west shore of said island westward 2,462 feet to the east end

10 of the draw of said bridge, and to a point not over 580 feet east from the Iowa shore of said river, and to a point 941 feet west of the middle of said main arm or body of said river at that point.

Par. 6. That the steamboat channel, or channel of the river where boats ordinarily run in carrying the commerce of the river, varies from side to side of said river, sometimes next to the Illinois shore and then next to the Iowa shore, and at other times crosswise, at most points in said river shifting from place to place as the sands of its bed are changed by the current at every stage of change of water; that at the point of the Keokuk & Hamilton bridge the river bed is rock and not subject to much change; that at that point, were it not for the bridge, the middle of the steamboat channel would be, and was before said bridge was erected, fully 300 feet east of the east end of the draw in said bridge, or 880 feet from the Iowa shore of said river and 2,162 feet from the shore of said river in Illinois on Island No. 4; that at places in said river there are two or more channels equally accessible and useful for the navigation of said river by steamboats and other crafts carrying the commerce of said river; that at said Keokuk & Hamilton bridge the channel used by steamboats is partly artificial, constructed by excavation of rock from the river bed to facilitate the approach to the lock of the U. S. canal immediately north from the bridge.

11 Par. 7. That the State of Iowa claims the right to tax all bridges across said river to the middle thereof, and, as of right it may do, taxes said Keokuk & Hamilton bridge to the middle thereof between the east and west abutments of said bridge—that

is, the west approach and abutment 200 feet and 1,096 feet of the bridge proper—thereby treating, for convenience of taxation, the middle of said bridge between abutments as the middle of said river at that point, but really 225 — less than one-half the distance across the main arm or body of said river at that point.

Par. 8. That the State of Illinois and its municipalities value, assess, and tax as in Illinois 716 feet of said bridge actually assessed and taxed in Iowa, and 225 feet of said bridge in addition thereto located in Iowa, but not taxed in said State of Iowa.

Par. 9. That the Keokuk & Hamilton Bridge Company, owner of said Keokuk and Hamilton bridge, is a corporation of both said States consolidated and complains of such double taxation.

Par. 10. That litigation is now pending over such taxation and is liable at any time to arise over the taxation of any of the other bridges across said river between said States, now numbering nine.

Par. 11. To the end that the line between said States be definitely fixed by the only court having jurisdiction to do so, your
12 oratrix prays that this court take jurisdiction of this bill; that the State of Illinois be summoned and requested to answer this bill, waiving such answer being on oath, and the cause be advanced to an early hearing, and upon final hearing definitely settle the boundary between said States at said several bridges; and for such other relief as shall appear equitable.

And as in duty bound will ever pray, &c.

JNO. Y. STONE,
Att'y Gen'l of Iowa, for Complainant.

JAMES C. DAVIS, *Of Counsel.*

(Endorsed:) Supreme Court U. S. 1891, October term. No. 11, original. The State of Iowa, complainant, *vs.* The State of Illinois. Bill of complaint. Filed Nov. 17, 1891.

13 And on the same day, to wit, on the 17th day of November, A. D. 1891, an answer was filed in the words and figures following, viz:

14 In the Supreme Court of the United States.

THE STATE OF IOWA, Complainant,
vs.
THE STATE OF ILLINOIS, Defendant. } Bill to Establish Boundary.

Answer of the State of Illinois to said Bill.

The State of Illinois, by George Hunt, its attorney general, for answer to the bill filed herein by the State of Iowa, or so much thereof as it is advised to answer, answering, says:

Respondent admits the statements in said bill contained in the first, second, third, fourth, and fifth paragraphs thereof.

Respondent denies that the boundary lines between said States of Iowa and Illinois is the middle of the Mississippi river, but insists

is the middle of the steamboat channel or channel most commonly used by boats in carrying the commerce of said river, whether at or east or west of the middle of said river; admit- that the State and municipalities in the State of Illinois claim the right to and do tax bridge and other structures in said river to the middle of such steamboat channel or channel of commerce, regardless of whether such channel is east or west of the middle of the main body or arm of said river, and do value, assess, and tax the Keokuk & Hamilton bridge to the draw and considerably west of the middle of
15 the main body or arm of said river, but the exact distance from either shore this respondent is unable to state.

Admit- the steamboat channel or channel of commerce of said river is first near one shore and then near the other, and at other places nearly across the river.

Denies that the middle of the steamboat channel or channel of commerce of said river at said Keokuk & Hamilton bridge is east of the east end of the draw of said bridge.

Denies the right of the State of Iowa to tax said Keokuk & Hamilton bridge to any point thereof east of the east end of the draw thereof or any other bridge east of the middle of the steamboat channel or channel of commerce of said river, though such channel may be largely west of the middle of the main body or arm of said river.

Admit- the statements of paragraphs 9 of said bill.

And now, having fully answered said bill, prays that this cause be advanced and the line between said States be established and respondent be discharged with its reasonable costs, &c.

And as in duty bound will ever pray, &c.

GEO. HUNT,
Attorney General State of Illinois, for Defendant.

(Endorsed:) Supreme Court U. S. 1891, October term.
16 No. 11, original. The State of Iowa, complainant, *vs.* The State of Illinois. Answer to bill of complaint. Filed Nov. 17, 1891.

17 And on the same day, to wit, on the 17th day of November, A. D. 1891, a replication was filed in the words and figures following, viz:

18 In the Supreme Court of the United States.

THE STATE OF IOWA
v.
THE STATE OF ILLINOIS. } Equity. Bill to Establish Boundary.

Replication to Answer of Defendant.

The State of Iowa, by its attorney general, John Y. Stone, for replication to the answer of the defendant, The State of Illinois, says that the statements in said answer, so far as the same travers- or

deny the statements in complainant's bill, are not true, and that the statements in said complainant's bill are true.

JNO. Y. STONE,
Att'y Gen'l of Iowa.

JAMES C. DAVIS, *Of Counsel.*

(Endorsed:) Supreme Court U. S. 1891, October Term. No. 11, original. The State of Iowa, complainant, *vs.* The State of Illinois. Replication of the State of Iowa. Filed Nov. 17, 1891.

19 And on the same day, to wit, on the 17th day of November, A. D. 1891, a cross-bill was filed in the words and figures following, viz:

20 In the Supreme Court of the United States.

THE STATE OF IOWA
v.
THE STATE OF ILLINOIS. } Bill to Establish Boundary. Equity.

THE STATE OF ILLINOIS
vs.
THE STATE OF IOWA. } Equity. Cross-Bill to Establish Boundary.

Par. 1. Complainant in the cross-bill, The State of Illinois, having answered the bill of complaint filed herein by The State of Iowa, files this cross-bill of complaint against The State of Iowa in this the Supreme Court of the United States to define the boundary lines between the States of Illinois and Iowa at the several bridges across the Mississippi river and the extent to which each State and its municipalities may tax said bridges respectively, and shows to this honorable court that there now exists nine bridges across said river between said States, the most southern of which is the Keokuk & Hamilton Bridge Company's railroad and wagon bridge, and the most northern of which is the Dunlieth & Dubuque Bridge Company's railroad bridge.

Par. 2. That for the purposes of taxation the State of Illinois and its municipalities claim the right to assess and tax said respective bridges to the middle of the channel of commerce or steamboat channel—that is, the channel usually used by steamboats
21 and other crafts navigating said river; that on the part of the State of Iowa and its municipalities it is claimed that each State has the right to assess and tax to the middle of the main arm or body of the said river, regardless of where the channel of commerce or steamboat channel—that is, that part of the river usually traversed by steam or other vessels carrying the commerce of said river—may be.

Par. 3. That the supreme court of the State of Iowa, in case of the Dunlieth & Dubuque Bridge Company *vs.* The County of Dubuque, 55 Iowa, 558, 564, hold the authorities in Iowa have the right to tax such structures to the middle of the main arm or body of the stream and no further, though at the point where such structure is

situated the channel or part of the river followed by steamboat-men in navigating the river is far east of the middle of such main body of the stream.

Par. 4. That, following the decision in that case, the authorities in Iowa assess and tax such structures to the middle of the main body of said river.

Par. 5. That at the point of the location of the said Keokuk & Hamilton bridge the main body of the said river, before the construction of said bridge, was between the Iowa shore at Keokuk, Lee county, Iowa, and the west shore of Island No. 4, in section 30, township 5 north, range 8 west, located in the city of Hamil-
22 ton, town of Montebello, Hancock county, Illinois, a breadth of about 3,042 feet; that in constructing said bridge a solid approach is extended from the shore at Keokuk into the river 200 feet, and from said shore on Island No. 4, in Illinois, about 700 feet, and the main body of said river confined between the abutments to said bridge 2,192 feet apart, and said bridge consists of said east and west abutments, eleven piers, a draw next to the west or Iowa abutment of 380 feet and 10 spans, together 1,812 feet.

Par. 6. That the middle of the steamboat channel, or that part of the river usually traversed by steamboat-men in navigating said river, is at or near the east end of said draw or pivot span, about 380 feet from the west abutment and 1,812 feet from the east abutment.

Par. 7. That the assessor in Illinois in assessing said bridge values the bridge to the east end of said draw and assesses the same against that part of said bridge in Illinois, and the authorities in Iowa value and assess said bridge to the middle thereof, 1,096 feet east from the west abutment, as in the State of Iowa; that thereby 716 feet of said bridge is valued and assessed both in Illinois and Iowa; that litigation is now pending in the lower courts between said bridge company and the authorities over said assessments.

Par. 8. That the same trouble and complications are liable to arise over the assessment of any other of said bridges.

23 Par. 9. No other court having jurisdiction to settle in an authoritative way the extent to which said bridge structures can be legally assessed and taxed, and to the end that the boundary lines between the States of Illinois and Iowa at said several bridges may be defined and settled, the State of Illinois prays that the State of Iowa be made defendant to this bill and summoned and required to answer this bill, and that upon the final hearing this court define and establish at each of said bridges the boundary lines between the States of Illinois and Iowa, to which points the respective States may tax.

Par. 10. That as this matter relates to the revenue and is of great public importance, that the same be advanced on the docket and heard at the earliest practicable day, to the end that the revenue may be collected without delays by litigation our such right to tax.

And as is duly bound complainant will ever pray, etc.

GEO. HUNT,

Attorney General State of Illinois, for Complainant in Cross-Bill.

(Endorsed:) Supreme Court U. S. 1891, October term. No. 11, original. The State of Iowa, complainant, *vs.* The State of Illinois. Cross-bill of the State of Illinois. Filed Nov. 17, 1891.

24 And on the same day, to wit, on the 17th day of November, A. D. 1891, an answer to cross-bill was filed in the words and figures following, viz:

25 In the Supreme Court of the United States.

THE STATE OF IOWA *v.* THE STATE OF ILLINOIS.	Equity. Bill to Establish Boundary.
THE STATE OF ILLINOIS, Complainant, *vs.* THE STATE OF IOWA, Defendant.	Equity. Cross-Bill to Establish Boundary.

Answer of Defendant to the Cross-Bill.

Respondent, The State of Iowa, by John Y. Stone, its attorney general, for answer to the cross-bill of complaint filed herein, or so much thereof as it is advised is necessary to answer, answering, says:

Par. 1. Admit- that there now exist nine bridges across the Mississippi river where it forms the boundary between said States of Illinois and Iowa, the most southerly of which is the bridge of the Keokuk & Hamilton Bridge Company, and the most northerly is the bridge of the Dunlieth & Dubuque Bridge Company.

Par. 2. Admit- that said State of Illinois and its several municipalities bordering on said river claim the right to tax said bridges from the Illinois shore of said river to the middle of the channel of commerce or steamboat channel—that is, the channel usually used by steamboats and other crafts in navigating said river—and that this respondent, The State of Iowa, and its several municipalities bordering on said river claim the right to and do tax said several bridges to the middle of the main arm or body of said river, regardless of where the channel of commerce or steamboat channel—that is, that part of said river usually traversed by steam or other vessels carrying the commerce of said river—may be.

26

Par. 3. Respondent denies the right of the State of Illinois or any of its municipalities to tax any of said bridges or any other structure in said river west of or on the Iowa side of the middle of the main arm or body of said river.

Par. 4. Respondent admits as true the statements in said cross-bill contained in paragraph five thereof.

Par. 5. Respondent denies the statements of paragraph six of said cross-bill as stated, but admits that prior to the construction of the Keokuk & Hamilton bridge aforesaid the middle of the steamboat channel, or that part of the river at that point usually traversed by steamboat-men in navigating said river, was and now is considerably

west of the middle of the main arm or body of said river; the exact distance respondent is unable to state, but is informed and believes about 960 feet east of the Iowa shore of said river and about 2,082 feet from the Illinois shore on Island No. 4, in said bill mentioned.

Par. 6. Respondent is informed and believes that the State of Illinois and its municipalities, in which the east end of said
27 Keokuk & Hamilton bridge is situated, assess and tax as in Illinois fully 716 feet of said bridge, which is located in Iowa and taxed by the authorities in Iowa.

Par. 7. Respondent admits the statements of paragraph seven of said cross-bill.

Par. 1. Respondent admits the statements of paragraph eight of said cross-bill.

Par. 2. And now, having fully answered said cross-bill, prays that this suit be advanced, and that upon the final hearing said boundary may be established.

And as in duty bound will ever pray, &c.

JNO. Y. STONE,
Att'y Gen'l of Iowa.

JAMES C. DAVIS, *Of Counsel.*

(Endorsed:) Supreme Court U. S. 1891, October term. No. 11, original. The State of Iowa, complainant, *vs.* The State of Illinois. Answer of State of Iowa to cross-bill of State of Illinois. Filed Nov. 17, 1891.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1892.

No. 5. Original.

THE STATE OF IOWA

vs.

THE STATE OF ILLINOIS.

MOTION.

Now comes the said plaintiff, The State of Iowa, and moves the Court for an order confirming the report of the commissioners appointed by this Court to determine and mark the boundary line between said States at the nine bridges across the Mississippi river between said States so far as it relates to the boundary at the Keokuk and Hamilton bridge, at Keokuk, Iowa, upon which report has been made. Said motion is founded upon said report and the record in this case.

(Signed) J. H. COLE,
" WALTER I. HAYES,
Attorneys for Plaintiff.

Endorsed: Supreme Court U. S., October term, 1892. No. 5. Original. The State of Iowa, complainant, *vs.* The State of Illinois. Motion for confirmation of commissioners' report as to boundary line at Keokuk and Hamilton bridge. Filed March 30, 1893.

KEOKUK, IOWA, *March* 23, 1892.

To the Honorable the Supreme Court of the United States.

GENTLEMEN: Your commissioners appointed under a decision of your honorable body in the case of The State of Iowa *vs.* The State of Illinois, rendered January 3, 1893, to determine and mark the boundary line between the States of Iowa and Illinois at the nine bridges across the Mississippi river between these States have the honor to respectfully submit the following report, viz:

After qualifying under oath, as by law provided, and after most careful consideration of the decision of your honorable body in the case above mentioned, your commissioners proceeded, as directed by you, to survey and fix the boundary line between Iowa and Illinois on the Keokuk and Hamilton bridge, at Keokuk, Iowa.

Your commissioners find that the said boundary line is situated (1,041.65) ten hundred and forty-one and sixty-five one-hundredths feet easterly of the center of the draw-span, measured along the axis of the bridge and crossing the structure in a direction parallel to the piers of the bridge.

Your commissioners also respectfully submit the accompanying plat, showing their measurements along the bridge and to neighboring monuments, as a matter of further record.

(Signed) MONTGOMERY MEIGS,
JOHN R. CARPENTER,
ALBERT WEMPNER,
Commissioners.

Endorsed: Supreme Court U. S., October term, 1892. No. 5. Original. The State of Iowa, complainant, *vs.* The State of Illinois. Report of commissioners as to boundary line at Keokuk and Hamilton bridge and plat accompanying same. Filed March 30, 1893.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1892.

No. 5. Original.

THE STATE OF IOWA, COMPLAINANT,

vs.

THE STATE OF ILLINOIS.

Joint Request for Appointment of Commissioners and Order Thereon.

To the Honorable Supreme Court of the United States:

Your decision of the 3d inst.—The State of Ia. *vs.* The State of Ills.—calls for the appointment of commissioners at the suggestion of counsel, "to make the proper examination, &c., &c., the true line," &c., &c.

As no appropriation is now available for that purpose, and as there is an emergency requiring that the line between Keokuk, Iowa, and Hamilton, Ill., be fixed at the earliest date, we join in asking the appointment as such commissioners of Montgomery Meigs, United States civil engineer; John R. Carpenter and Albert Wempner, a licensed pilot of over forty years.

We further request that in the appointment of this commission they be directed to proceed at once to fix the bound-

ary line on the Keokuk and Hamilton bridge, and await the making of any further examination until an appropriation be made for this purpose.

Respectfully submitted.

JOHN Y. STONE,
Attorney General for State of Iowa.

DES MOINES, IOWA, *January* 19, 1893.

M. T. MOLONEY,
Attorney General for State of Illinois.

SPRINGFIELD, ILLS., *January* 19, 1893.

E. S. SMITH,
Of Counsel for the State of Illinois.

Endorsed: Supreme Court U. S. October term, 1892. No. 5. Original. The State of Iowa, complainant, *vs.* The State of Illinois. Joint request for the appointment of commissioners to fix boundary. Filed Feb. 23, 1893.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1892.

THE STATE OF IOWA, *Complainant*,
vs.
THE STATE OF ILLINOIS. } No. 5, Original.

And now come the parties, by their respective attorneys, and file in court their stipulation agreeing upon Montgomery Meigs (a United States civil engineer), John R. Carpenter, and Albert Wempner (a pilot) as commissioners, and recommend their appointment in this case, and, as there is litigation pending relating to the taxation of the Keokuk and Hamilton bridge and immediate action thereon is desired, it is ordered that said Montgomery Meigs, John R. Carpenter, and Albert Wempner be, and they are hereby,

appointed commissioners to locate and mark the State line between the States of Iowa and Illinois, pursuant to the opinion of this Court in this cause, at each of the nine bridges across the Mississippi river between these States; and inasmuch as there is an emergency existing therefor, it is ordered that said commissioners proceed at once to ascertain and mark the boundary line between said States at the Keokuk and Hamilton bridge and report at once their action in that regard before proceeding to ascertain the line or mark the same at the other bridges, and that afterward they determine and mark the said State line at the other eight bridges when requested by either party and report the same; that before entering upon their duties they take and forward to the clerk of this Court, to be filed, an oath that they will faithfully perform their duties as such commissioners under the decision rendered in this cause to the best of their ability; that the clerk of this Court furnish to said commissioners a copy of this order and the opinion of the Court in this cause.

MARCH 7, 1893.

Office Supreme Court U. S.
FILED.
OCT 10 1892
JAMES H. McKENNEY,
CLERK.

SUPREME COURT

OF THE UNITED STATES.

OCTOBER TERM, 1891.

Original No. 11.

SET FOR HEARING OCTOBER TERM, 1892.

THE STATE OF IOWA, *Complainant,*

v.

THE STATE OF ILLINOIS, *Defendant.*

EQUITY.

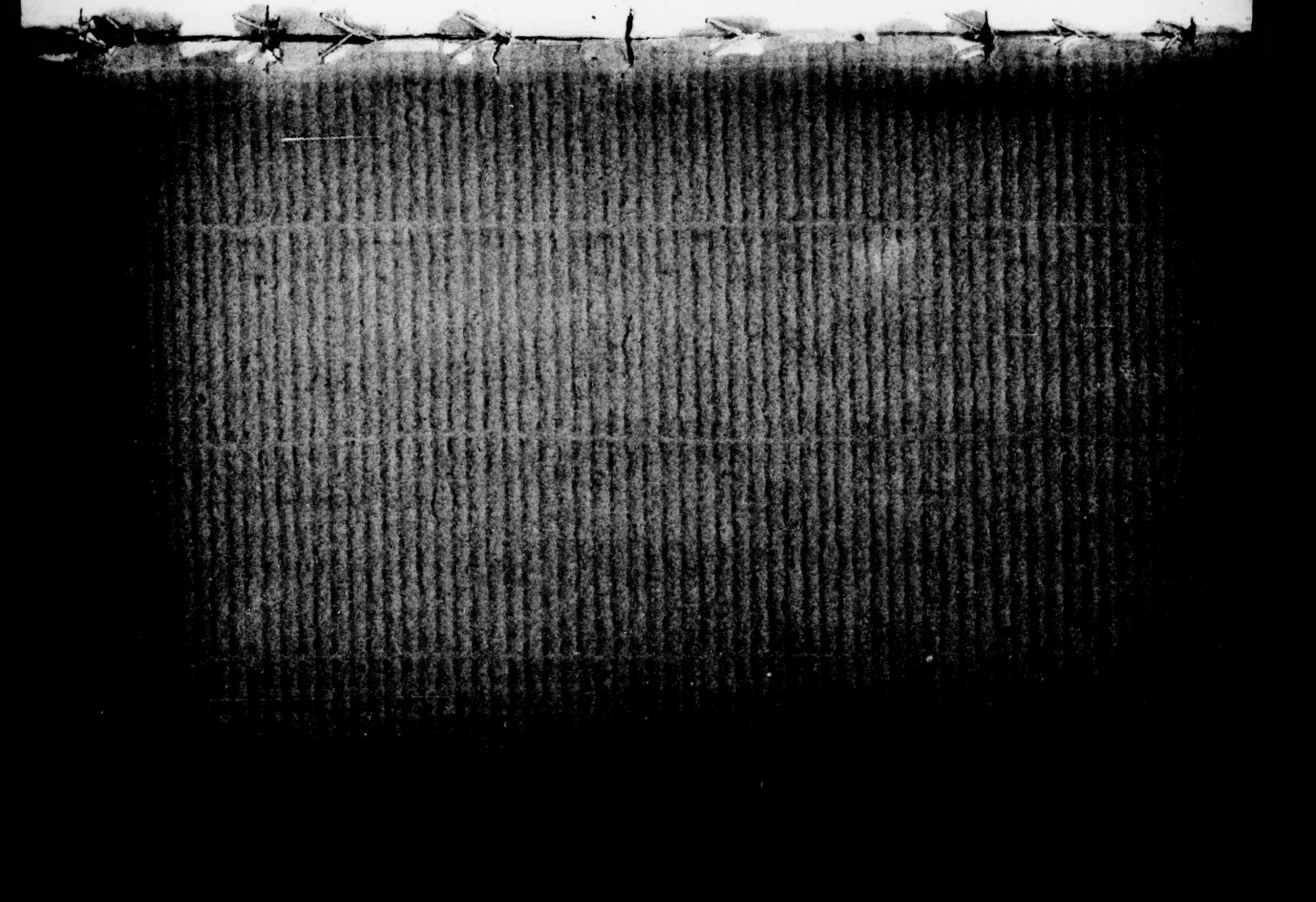
On Bill, Answer and Replication, and Cross-Bill and Answer.

POINTS, BRIEF AND ARGUMENT FOR COMPLAINANT.

JOHN Y. STONE,
Counsel for Comp't and Attorney Gen. of Iowa.

JAMES C. DAVIS,
of Counsel.

REPUBLICAN STEAM PRINT, Carthage.



Supreme Court of the United States.

OCTOBER TERM, 1891.

Original No. 11.

SET FOR HEARING OCTOBER TERM, 1892.

THE STATE OF IOWA, *Complainant*,

v.

THE STATE OF ILLINOIS, *Defendant.*

EQUITY.

On Bill, Answer and Replication, and Cross-Bill and Answer.

POINTS, BRIEF AND ARGUMENT FOR COMPLAINANT.

JOHN Y. STONE,
Counsel for Comp't and Attorney Gen. of Iowa.

JAMES C. DAVIS,
of Counsel.

THE contest in this case is over the points or parts of the Mississippi River, over which the respective states, Iowa and Illinois, have jurisdiction for the purposes of taxation, as well as for all other purposes; hence involves the boundary lines in said river between said states.

On the part of Complainant it is contended that for purposes of taxation as well as for all other purposes, the boundary line is at the *middle of the main body of the river*, taking the middle line between the shores upon each side, without regard to the steamboat channel, or lowest and deepest part of the stream, and to determine the shores or water lines on each side, the measurements must be taken when the water is in its natural or ordinary stage, at a medium highth, not swollen by floods nor shrunk by drouth.

Angel on Watercourses, Secs. 10 and 101a.
Dunlieth & Dubuque Bridge Co. v. The County of Dubuque, 55 Iowa, 528.

The act of Congress of April 18th 1818, known as the Enabling Act, and defining the western boundary of Illinois; also the Constitution of Illinois, 1818, 1848 and 1870, all defining the western boundary of Illinois, as *down along the middle of that (the Mississippi) river to its confluence with the Ohio.*

On the part of the defendant it is claimed that the state of Illinois has jurisdiction for the purpose of taxation, and all other purposes, to the middle of the *steamboat channel* of said river regardless of where *that channel* may be, whether on the east or west bank of the river. *Bertschi v. The Keokuk & Hamilton Bridge Co. in the Appellate Court, 3d Dist. of Ill., and dictum of*

Judge Scott *in Buttenuth v. St. Louis Bridge Co., 123 Ill., 546, 548.*

It is a well known fact, that the *steamboat channel* (or channel of commerce, as the local authorities in Illinois sometimes designate it,) is more often close under one bank of the river, first one side and then the other, than at or near the middle of the main *arm* or *thread* of the stream.

For instance, at the location of the Dunlieth & Dubuque Bridge, though the main *arm* or *thread* of the stream is about 1800 ft. wide, the *steamboat channel* is immediately at the Illinois Shore, the center of such channel being only about 400 feet west of the shore; while at the location of the Keokuk & Hamilton Bridge, the reverse is the fact, the *steamboat channel* is immediately at the Iowa shore, the middle of such channel being only about 300 feet from that shore, while the main *arm* or *thread* of the river, always a solid body of water, except as it is obstructed by approaches to said bridge, is near 3,000 feet in width.

Practically, in taxing the Keokuk & Hamilton Bridge, the authorities in Iowa tax to the middle of the river, and the authorities in Illinois tax to the draw in said bridge, which, it is asserted by the Illinois officers, is the middle of the *steamboat channel*, and the line between said states. The effect of which is to tax over 900 feet of said bridge both in Iowa and Illinois.

It is clearly the right of the state of Iowa, to tax all property within the state, and is as clearly the duty of the state to so cause its boundaries to be marked and designated, that there can be no dispute between it and Illinois, as to jurisdiction, whereby its citizens are subjected to taxation in both states on the same property.

The pleadings in this cause present fully to the court the facts; hence no evidence is required.

On the part of Iowa the claim is that the line between said states, is the *middle of the main body or arm of said river*, and that its jurisdiction for all purposes extends to that line.

On the part of Illinois the claim is, that the line between said states, is the *middle of the steamboat channel*, and that its jurisdiction for all purposes extends to that line, regardless of where, in the main body or arm of said river may it be, or whether such steamboat channel is east or west of the middle of the main arm or body of the river.

This Court, only, can authoritatively determine that dispute, and it must do so, not upon evidence, but, upon the intention of congress in the passage of said enabling act of April 18th 1818, and what the people of Illinois understood it to mean when the Constitution of Illinois, of 1818 was adopted.

To the complainant it seems there ought to be no dispute but that the *middle of the main body or arm*

of the river was intended and understood as the west boundary of Illinois.

In support of the position of Complainant, reference is made to the following authorities:

Angel, in his work on Watercourses, Sec. 10, speaking of riparian rights, says:—"The soil of the bed itself and consequently the water, may be and most often is divided between opposite riparian owners; that is, the land on one side may be owned by one person and the land on the other side by another. When such is the case each proprietor owns to the middle, or what is called the *thread* of the river." In note 2—"In ascertaining the thread of the river, it will be proper to take the middle line between the shores upon each side, *without regard to the channel* or lowest and deepest part of the stream. And in ascertaining the shores or water lines on each side, to measure, it will be proper to find what those lines are when the water is in its *natural and ordinary stage*, at a medium height, neither swollen by freshets nor shrunk by drought." *Trustees v. Dickinson, 9 Cushing, 544, 552.*

Again, at Sec. 95, Angel says, using the language of Mr. Justice Story—"PRIMAFACIE, every proprietor on each bank of a river is entitled to the land covered with water, to the *middle thread of the stream.*"

WHAT IS THE MIDDLE OF A RIVER?

Anderson's Dictionary of Law, says :

MIDDLE.—See Thread.

THREAD.—The middle line of a stream or highway. See Filum, Riparian, Street.

FILUM.—A thread; a line,—the middle line of a stream or road. The imaginary line drawn through a stream or highway at which the titles of the opposite owners presumably meet.

FILUM AQUA.—The line of the water; water line.

MEDIUM FILUM AQUA.—The middle line of the water.

MEDIUM FILUM VIQE.—The middle of the road.

Again, at Sec. 101 *a*, Angel says—"It is apparant that the rights of riparian proprietors on opposite banks of the stream do not depend upon and are not affected by the locality of the channel through or along which the larger or even the chief and principal part of water flows. Wherever this current may be, *the center line of the bed of the stream*, parallel to and equally distant from each shore, is the boundary of their lands."

The principles thus stated have been repeatedly held to be the rule of property in Illinois.

Middleton v. Prichard, 3 Scam. 510.
Braxon v. Bressler, 64 Ill., 490.
Canal Trustees v. Haven 5 Gilm, 557, 558.
The Chicago & Pacific R. R. Co. v. Stien 75 Ill., 44.

Houch v. Yates, 82 Ill., 181.
Cobb v. Lavalle, 89 Ill., 334,
Washington Ice Co. v. Shortall, 101 Ill., 52.
Village of Brooklyn v. Smith, 104 Ill., 438, 439.
Piper v. Connelly, 108 Ill., 651.
McCartney v. C. & E. R. R. Co. 112 Ill., 634.
Buttenuth v. St. Louis Bridge Co., 123 Ill., 546, 549, 550, 551, 2, 3.
St. Louis Bridge Co. v. East St. Louis et al., 121, Ill., 238, 245.

This last was a bill filed in the St. Clair Circuit Court, to enjoin the collection of a *city tax*, against that part of the *St. Louis Bridge*, situated East of the centre of the middle span of the bridge, that being the middle of the *river*—and West of the West line of Front St. in East St. Louis.

Shope J. at p. 245, says, "The Mississippi is a navigable stream in fact, though not so at common law, and the jurisdiction of the State of Illinois, for all purposes not delegated to the general government, extends over the territory and waters of said river, TO THE MIDDLE THEREOF; and when property is found situated within such limits, or crimes and offences are committed within the legal boundaries of the State, whether such territory is covered with water or is dry land, the general laws of the State must be given effect."

In Morgan & Harrison v. Reading, 3 Sm. & Marshall, 366, a suit for rent or use and occupation, by riparian,

owner, against boatmen using the bank 119 days, Ch. J. Sharkey, p. 397, says *France* "was the first owner, by appropriation, of the Mississippi and all the territory of its tributaries. By treaty in 1763 * * France ceded to Great Britain all her territory east of the Mississippi river and north of the river Iberville, and the two powers fixed the boundary between them, by a line drawn along the middle of the river Mississippi." * * Great Britian continued to be the owner until Nov. 30th, 1782, when it ceeded to the U, S. all bounded on the west, north of 31 deg. north latitude, "*by a line drawn along the middle of the Mississippi River.*" Confirmed by treaty of 3d Sept. 1783. At p. 398: "Thus the U. S. succeeded to all the territory east of a line drawn along the middle of the Mississippi River.

In 1817 *Mississippi* was admitted with its west "*boundary* up the *Mississippi* River." * * "Congress adopted the more general mode of defining boundary on water courses, and omitted to designate the middle of the river as the limit, but as we shall endeavor to show, did not thereby change the original boundary."

At p. 399. "Thus we find the common law was adopted for the government of Mississippi." * * "*The middle of the river* being the dividing line, it follows that all grants, public as well as private * * must be construed by the rules of the common law." * * "The Mississippi territories by this rule extends to the *middle of the river.*" The rights of riparian owners extend to the MIDDLE OF THE RIVER.

In Dunlieth & Dubuque Bridge Co. v. The County of Dubuque, 55 Iowa, 558. This was an appeal from an assessment for taxes. P. 559, The bridge was 1,760 feet long, between abutments. From the Illinois shore to the middle of the *pivot-pier* is 430 ft. The pivot-pier is in the middle of the main channel followed by vessels in navigation of the river. The main body of water of the river (p. 570) flows in the channel between the abutments of the main bridge and is equal thereto in breadth.

6th. The Court finds the "eastern boundary of Iowa "is at the center of said main bridge, being the middle "of the main stream or channel of the Mississippi "river running thereunder, and distant 880 feet respect-"ively from the Iowa and Illinois shores or banks."

Court: The middle of the bed of the stream, regardless of the deepest channel, is the line between riparian owners, whether individuals or states.

Pratt v. Lawson et al., 2 Allen, 275, **284-5.**

Angel on Water Courses, § 10 and note 2, § 11 and note 3.

Jones v. Soulard, 24 Howard, *64-5*. The question was one of *accretions* in front of *St. Louis*, in Mississippi River. The charter of *St. L.* is "*thence by the Mississippi River to the place of begining.*"

This expression confers riparian rights, *to the middle thread of the stream.* The court say, 1st: "We are of "the opinion that the charter of St. Louis of 1809, ex-

"tends to the eastern boundary of the state of Missouri, "IN THE MIDDLE OF THE RIVER MISSISSIPPI."

The Sup. Court of Ill., in Buttenuth v. St. Louis Bridge Co., *supra*, at page 550 say: No reason is perceived why the principles here stated should not control the decision of the case being considered. As before remarked, it is manifest it was the intention of Congress, the Mississippi River should constitute a common boundry between the States of Illinois and Missouri, and had the words the "middle of the Mississippi River" and the "middle of the main channel" been omitted in both enabling acts of Congress, still the river itself would be the boundary and *each State would hold to the* MIDDLE OF THE STREAM."

The river at St. Louis bridge is like the river at the Keokuk & Hamilton bridge,—one open, unbroken sheet of water from the Missouri shore at St. Louis to the Illinois shore on Bloody Island,—and from the Iowa shore at Keokuk to the Illinois shore on Island No. 4. The distance at St. Louis being about 1500 feet and at Keokuk about 3000 feet.

Illinois authorities insist the middle of the river is at the middle of the channel ordinarily used by steamboats, less than 600 feet from the Iowa shore and over 2400 feet from the Illinois shore, (of that open sheet of water composing the main body or channel of the river) on Island No. 4. and about 900 feet west of the middle of the river.

Iowa is a prohibition state. Suppose the authorities at Hamilton grant a license to keep a dram shop immediately east of the east end of the draw and within 600 feet of the Iowa shore, what would be the result should the Iowa authorities demolish the dram shop? Could they be indicted and punished in Illinois?

If Illinois has the right to tax to the east end of the draw, the bridge to that point is in the City of Hamilton, and its authorities may lawfully license the dram shop, and if demolished under order of a court in Iowa, the sheriff or marshal obeying the order of the Iowa court could and should be indicted and punished in Illinois.

To my mind the simple question is, what did congress intend by the enabling act of 1818, and what did the people of Illinois understand was intended when adopting the constitutions of 1818, 1848 and 1870. Did they mean what they said *that the middle of the Mississippi River* was the western boundary of Illinois?

Prior to 1818, both Illinois, Iowa and Missouri were territory of the United States over which congress had supreme control.

Prior to that time, on May 18, 1796, and again May 3d, 1811, congress declared all navigable rivers within its territory public highways for the use of all the people, and they so remain. Sec 2476 and 5251 U. S. R. S. Neither Missouri, Iowa or Illinois have any right to interfere with the free navigation thereof as such highway. The use of the whole river from bank to bank is free as

a public highway to all the people of all the states. Not to the people of Illinois or Iowa alone, but to all. No question of right to use the stream and every part thereof as a highway could possibly arise between the states. Neither could authorize the construction of a bridge or other work that would interfere in the least with the use of the river as a highway without consent of congress. While that is true, the right to the soil under the water to the *middle of the river*, belongs in either state to the state or the riparian owner. And the right to tax any structure, placed in the river by proper authority, *to the middle of the river*, belongs to the *riparian state.*

The Supreme Court of the State of Iowa, by its solemn adjudication of the question properly before it, in the case of the Dunlieth & Dubuque Bridge Co. v. The County of Dubuque (supra) has given its construction as to the right of taxation. It holds that it has a right to tax to the *middle of the river.* And conceeds to Illinois the same right. In that case the steamboat channel was on the Illinois shore, and the authorities of Dubuque Co. had assumed to tax to the center of the steamboat channel, about $\frac{3}{4}$ the distance across the open bed of the river. The Supreme Court say that won't do. That the line between the states is the *middle of the river.* Since that decision Iowa has taxed the several bridges across the river to the middle of the river. This is the only case where the question was properly and squarely before the court, and directly passed upon, until the case of Bertschi v. the Keokuk & Hamilton Bridge Co., before cited as decided by the Appellate

Court, 3d Dist. Ill., in which that court holds the middle of the *steamboat channel* is the line between the states

The case in Iowa as a case in point and expressing the opinion of the State of Iowa on the question in this case, is entitled to great weight, notwithstanding gentlemen say the Supreme Court in the *Buttenuth* case did not approve it. The Supreme Court in the Buttenuth case was not called upon to either approve or disapprove. The question of our right to tax beyond the middle of the river was not before the court—was not in the case. What the court did decide was that Illinois had the right to tax to the *middle of the river*. Nothing more. Exactly what the Iowa court decided. And the Iowa court went further and distinctly say they cannot tax beyond the middle of the river.

11 Sub. C. R. *344-5-6*,

City of St. Louis v. Rutz, p. 344. Blatchford J. says: "The law as stated by law writers, and in the adjudged cases *seem to be*, that when a river is declared to be the boundary between states, although it may change imperceptibly from natural causes, *the river, as it runs, continues to be the boundary*. But if the river should suddenly chauge its course, or desert the original channel, the rule of law is, THE BOUNDARY REMAINS IN THE MIDDLE OF THE DESERTED RIVER BED."

Missouri v. Kentucky, 11 Wallace, 395, the opinion of Davis, J., seems to put the whole subject at rest.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1892.

THE STATE OF IOWA, *Complainant.*

vs.

THE STATE OF ILLINOIS, *Defendant.*

ORIGINAL SUIT.

BRIEF AND ARGUMENT FOR DEFENDANT.

GEORGE HUNT,
Attorney General, State of Illinois.

SPRINGFIELD, ILL.:
THE H. W. ROKKER PRINTING HOUSE.
1892.

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GEORGE HUNT,
Attorney General, State of Illinois.

May it Please the Court:

The pleadings constitute the entire record in this cause, and the object of the proceeding is to ascertain and fix by judicial finding the boundary line between the States of Iowa and Illinois.

The boundary line between these two States is fixed by two Acts of Congress, passed at different times, and differing slightly in verbiage. These two acts must be reconciled.

1.

The Act of Congress of April 18, 1818, to enable the people of Illinois to form a Constitution and State Government, and for the admission of such State into the Union, after defining the northern boundary thereof, proceeds: "Thence west to the middle of the Mississippi river, and thence down along the middle of that river to its confluence with the Ohio river." (I. Star & Curt, p. 50.) The same language concerning this boundary has been preserved in the Constitutions of said State of 1818, 1848 and 1870. Id. pp. 55, 68, 99.

The Enabling Act for Iowa, passed in 1848, (5 U. S. Stat., p. 742) gives the eastern boundary of said State as follows: "Beginning at the mouth of the Des Moines river, at the middle of the Mississippi, thence by the middle of the channel of that river to a parallel of latitude," &c.

2.

Let us see if we can ascertain the proper meaning of the expression, "middle of the river," as used in this Enabling Act.

In Wheaton on International Law (3d Eng. ed.), Sec. 200, p. 297, it is said:

"By the Treaty of Peace concluded at Paris in 1763, between France, Spain and Great Britain, the Province of Canada was ceded to Great Britain by France, and that of Florida to the same power by Spain, and the boundary between the French and British possessions in North America was ascertained by a line drawn throngh the *middle*

of the river Mississippi, from its source to the Iberville, and from thence through the latter river and the lakes of Maurepas and Pontchartrain to the sea."

The boundary line between the territories belonging respectively to Great Britain and France, as fixed by the treaty of 1763, was the middle of the Mississippi river. It needs no argument to show that an international boundary line, established by this language, would be the middle of the main channel or channel of commerce. Every consideration, both of dominion and commercial equality, would give to the language this meaning. Where the Enabling Act creating a State out of part of the territory embraced in the treaty, uses the same language to define the boundary as that used in the treaty, it will certainly receive the same construction as that given to the treaty, unless for the most obvious reasons another construction should obtain.

After the peace between the United States and Great Britain, the territory on the east of the Mississippi passed to the United States, while that on the west remained with France.

Unquestionably the boundary line remained the same. The same consideration which fixed it in the old relations would retain it in the new.

Subsequently the State of Illinois was created out of the territory on the east of this boundary line, and the State of Iowa out of that on the west.

The middle of the Mississippi river thus became the boundary between these different States. How was the dividing line to be ascertained? The same author says (Sec. 192, p. 291):

"Where a navigable river forms the boundary of conterminous States, the middle of the channel, or *thalweg*, is generally taken as the line of separation between the two States, the presumption of law being that the right of navigation is common to both; but this presumption may be destroyed by actual proof of prior occupancy and long undisturbed possession, giving to one of the riparian proprietors the exclusive title to the entire river."

Therefore, according to this eminent author, the middle of the *channel* of the river is the boundary line. What is the *channel* of the river? Clearly, it is not the same thing as the bed of the river. Wheaton says (Sec. 202, p. 301):

"The *channel* of the Mississippi was remarkably winding, crosssing and re-crossing perpetually from one side to the other of the *general bed of the river*."

The general bed of the river is the space between the two shores, but the channel of the river is the navigable portion of the river—that part of the river suited for and usually used for the purposes of navigation. As Wheaton says, the middle of the channel or *thalweg* is taken as the line of separation between two States, because the presumption of law is, that the right of navigation is common to both. What each nation or power would insist upon was an equal right to the navigation of the river. This could not be obtained if the river was divided by drawing a line between two shores unless the width of the navigable channel was coincident with the distance between the two shores. Each nation demands one-half of the navigable channel in whatever part of the river it is located, and the States created out of the territory belonging to these nations would take the same boundaries.

Wheaton also comments on what is called in the international law "innocent passage," permitted in streams and bays by the nation which has jurisdiction over the same. Such passage would be permitted for commercial purposes in times of peace, but such right is an imperfect right, as the author points out, which may be interrupted and prevented by the nation owning the navigable water.

Therefore, where the middle of the river is made the boundary, the line is drawn in the middle of the navigable channel. It is in this sense that the words are used in the treaty of 1763.

In Creasy on International Law, p. 222, Sec. 231, it is said:

"It has been stated that where a navigable river separates neighboring States, the *thalweg*, or middle of the navigable channel, forms the line of separation. Formerly a line drawn along the middle of the water, the *medium filum aquae*, was regarded as the boundary line; and still will be regarded *prima facie* as the boundary line, except as to those parts of the river as to which it can be proved that the vessels which navigate those parts keep their course habitually along some channel different from the *medium filum*. When this is the case, the middle of the channel of traffic is now considered to be the line of demarcation."

In Halleck on International Law, Vol. 1, p. 145, Sec. 23, it is said:

"Where the river not only separates the conterminous States, but also their territorial jurisdictions, the *thalweg*, or middle channel, forms the line of separation through the bays and estuaries through which the waters of the river flow into the sea. As a general rule, this line runs through the middle of the deepest channel, although it may divide the river and its estuaries into two very

unequal parts. But the deeper channel may be less suited, or totally unfit for the purposes of navigation, in which case the dividing line would be in the middle of the one which is best suited and ordinarily used for that object."

Cited with approval in Wharton Digest of International Law of the United States, Vol. 1, p. 97.

While we readily admit that the right of navigation which would fix the middle of the navigable channel as the boundary between separate or alien nations, does not operate with the same force between the States of the American Union, yet the question remains, where a boundary line has been fixed between two alien powers, and the same line, described in practically the same language, becomes the boundary between two States of the American Union, will the changed political condition so affect the force of the language used as to change the boundary line?

The Enabling Act for admitting Wisconsin, passed in 1846, (9 U. S. Stat., p. 56), gives the western boundary of that State as "thence down the center of the main channel of that (Mississippi) river to the north-west corner of the State of Illinois." The north-west corner of the State of Illinois, therefore, must be in the middle of the main channel of the river; and it is down along the middle of the main channel of the river that the western boundary of Illinois runs. If the words, "in the middle of the river," in the Enabling Act of Illinois, and the words, "middle of the main channel," in the Enabling Acts for Iowa and Missouri, do not describe the same line, then it would result that there is some portion of the river which would be in none of the States,—a construction which could not be allowed.

In *Buttenuth* v. *St. Louis Bridge Co.*, 123 Ill. 535, the court says (p. 551):

"The suggestion, Congress, by its Enabling Acts, may have established one line in the Mississippi river for the eastern boundary for Missouri, and another line, farther east, for the western boundary of Illinois, has nothing, in law or in fact, upon which to rest. The whole legislation on this subject shows, as before remarked, it was the intention of Congress to make the river a 'common boundary' between these States, and the expressions used in both Enabling Acts, although the words used may not be the same, make the middle of the main channel of the permanent river the boundary line."

It will be observed that the court here says that the middle of the *main channel of the permanent river* is the boundary line. The permanent river is one thing, and the main channel of the permanent river is another thing. By the permanent river is doubtless meant the river between the permanent shores at an ordinary stage of water. If the middle of that space were the boundary line, of course the court would have said that the middle of the permanent river was the boundary line; but the court does not say that. It says that the middle of the main channel of the permanent river is the boundary line. The main channel, therefore, is not the same thing as the river from shore to shore. What then is the main channel of the river? We have seen that it is the channel which is best suited and is usually used for the purposes of navigation—the channel of commerce used by vessels in the carrying trade.

In *Dunleith & Dubuque Bridge Company* v. *The County of Bubuque*, 55 Iowa 558, the Supreme Court of Iowa had this question of the State boundary between Iowa and Illinois

before it, in a case involving the taxation of a bridge across the Mississippi river. The court in that case says that but one question was presented for its determination, and that question was, what line was indicated by the words "middle of the main channel" in the act of Congress admitting Iowa to the Union. The court says that there are two meanings to the word "channel"; one the bed over which the water flows from bank to bank, and the other the line of the deep water which vessels follow, which is the sense in which the word is familiarly used by the boatmen of the Mississippi river. The Iowa court decided that the words "main channel" in the Act of Congress meant the bed of the river from bank to bank.

The same question came before the Supreme Court of Illinois in the case *Buttenuth* v. *The St. Louis Bridge Co.*, *supra*. The question arose in the same manner in which the question arose in the Iowa case, viz., the taxation of a bridge across the Mississippi river. The Supreme Court differs from the Supreme Court of Iowa in the case above referred to, and decides that the words, "middle of the river," do not mean a line midway of the water surface; that the words "middle of the river," and "middle of the main channel," are synonymous, and the words "main channel," as used in the Acts of Congress, mean that space within which vessels can, and usually do, pass; that this expression does not include the shallow water of the stream, which at some seasons of the year may be impossible of navigation, but it is the "channel of commerce," upon which each nation or State demands the right to move its products without any interference from the State or nation occupying the opposite shore. The court says (p. 547):

"When applied to rivers as boundaries between States, the phrases, 'middle of the river,' and 'middle of the main channel,' are equivalent expressions, and both mean the center line of the main channel,—or, as it is most frequently expressed, the 'thread of the stream.' Should the expression, 'middle of the river' be construed to mean a line midway of the water surface, that would give no permanent boundary that could be ascertained. It would be at one point at one time, and distant away at another. Had the boundaries of Illinois been fixed at the time of the high water in 1844, and the middle of the river opposite St. Louis be held to be a line midway of the surface of the water, that line would then have been far east of the present city of East St. Louis, and on the waters receding, it would have shifted back toward the west, nearer the city of St. Louis. So unsatisfactory a proposition as that will not be adopted. It would lead to insurmountable difficulties. Some light will be cast upon the subject of inquiry by first ascertaining, as near as may be, the meaning of the words, 'main channel,' 'mid-channel,' middle of the current,' as those terms are used in the adjudged cases and in the text-books that shall be examined.

"The definition of the word 'channel,' given in the most recent edition of Webster's Dictionary, is, 'the bed of a stream of water, especially the deeper part of a river or bay where the main current flows.' The case of *Dunleith and Dubuque Bridge Co.* v. *County of Dubuque*, 55 Iowa 558, while this court does not approve the decision of the case contains a very acurate definition of the word 'channel,' as commonly nsed by river men. It is, 'the word channel, when employed in treating subjects connected with the navigation of rivers, indicates the line of the deep water which vessels follow.' In *Rowe* v. *Smith*, 51 Conn. 256, it is said the expression, 'middle of the channel of the bay or harbor,' does not refer to the thread of deepest water, but to that space within which ships can and usually do pass.' It is apprehended it is in this sense the expressions, 'middle of the river,' 'middle of the main channel,' 'mid-channel,' 'middle thread of the channel,' are used in enabling Acts of Congress and in State constitutions es-

tablishing State boundaries. It is the free navigation of the river,—when such river constitutes a common boundary, that part on which boats can and do pass, sometimes called 'nature's pathway,'—that States demand shall be secured to them. When a river, navigable in fact, is taken or agreed upon as the boundary between two nations or States, the utility of the main channel, or, what is the same thing, the navigable part of the river, is too great to admit a supposition that either State intended to surrender to the State or nation occupying the opposite shore, the whole of the principal channel or highway for vessels, and thus debar its own vessels the right of passage to and fro for purposes of defense or commerce. That would be to surrender all, or at least the most valuable part of such river boundary, for the purposes of commerce or other purposes deemed of great value to independent States or nations."

The court then cites certain cases as illustrative of this point, and, after deciding that the middle of the main channel of the permanent river is the boundary line, as we have quoted above, proceeds (p. 551):

"In such cases the principle is as stated by Mr. Woolsey, in his work on International Law, Sec. 58: 'Where a navigable river forms the boundary between States, both are presumed to have free use of it, and the dividing line will run in the middle of the channel, unless the contrary is shown by long occupancy or agreement of parties.' Commercial considerations make it imperative, where States or nations are divided by a navigable river, each should hold to the center thread of the main channel or current along which vessels in the carrying trade pass. That is the 'channel of commerce,'—not the shallow water of the stream, which, at some seasons of the year, may be impossible of navigation,—upon which each nation or State demands the right to move its products without any interference from the State or nation occupying the opposite shore. So important has the right ever been deemed, it is thought to be embraced in all treaties, cessions, ordinances, statutes

and constitutions made, enacted or adopted in regard to the Mississippi river since the Federal government was organized. It was the great desire to secure this important privilege that gave rise to all the efforts on the part of the general government to obtain the control of the Mississippi river from its source to that point where it empties into the gulf and connects with the sea."

This case, then, decides that the boundary line between the States of Iowa and Illinois is the middle of the navigable channel of the river, along which vessels in carrying trade can and usually do pass—the channel of commerce.

The court decides that the middle of the river in the Enabling Act means the middle of the main channel, and that the main channel of the river is the space in which vessels can and usually do pass, and does not include the shallow water of the stream, which, at some seasons of the year, may be impossible of navigation, but is the channel of commerce; and, after so defining the main channel, the court then says:

"This court has no hesitation in coming to the conclusion that all of that part of the bridge and its approaches that lies east of the main line of the channel of the river, is within the jurisdiction of the State of Illinois for the purposes of the State and local taxation."

In *St. Louis* v. *Rutz*, 138 U. S. 226, the court says (p. 248):

"The Enabling Act of April 18, 1818, 3 Stat. 429, Sec. 2, under which Illinois was organized as a State and admitted into the Union, made 'the middle of the Mississippi river' the western boundary of the State. The Enabling Act of March 6, 1820, 3 Stat. Sec. 2, under which Missouri was organized as a State and admitted into the Union, made the 'middle of the main channel of the Mississippi river' the eastern boundary of Missouri, so far as its boundary

line was coterminous with the western boundary of Illinois. It has been held by the Supreme Court of Illinois, *Buttenuth* v. *St. Louis Bridge Co.*, 123 Illinois 535, that these two Enabling Acts are to be construed as *in pari materia*, and that the common boundary line between Missouri and Illinois is the 'middle of the main channel of the Mississippi river.' The 'middle of the main channel of the Mississippi' has been constantly treated as the eastern boundary of the State of Missouri. *Jones* v. *Soulard*, 24 How. 41; *The Schools* v. *Risley*, 10 Wall 91."

Therefore, the boundary line between Illinois and Iowa is the *middle of the main channel* of the Mississippi river. Is the main channel of the river the same thing as the river from shore to shore? The authorities show clearly the distinction between the two.

Angell on watercourses says:

"In ascertaining the thread of the river it would be proper to take the middle line between the shores on each side without regard to the *channel* or lowest and deepest part of the stream."

This clearly shows the distinction between the channel and the river from shore to shore. Again from the same author:

"It is apparent that the rights of riparian proprietors on opposite banks of the stream do not depend upon and are not affected by the *locality of the channel* through or along which the larger or even the chief and principal part of the water flows."

This quotation also shows the distinction between the channel and the bed of the river from shore to shore.

There is but one point in controversy in this case, and that we believe has been presented at sufficient length by both parties. It is important that it shall be determined, to the end that limits of the taxing power as well as the

general jurisdiction of each of these States shall be defined. We join with counsel for complainant in the request that a commission be appointed to establish and mark the common boundary line of these two States on the several bridges crossing the Mississippi river between them.

Respectfully submitted.

GEORGE HUNT,

Attorney General, State of Illinois.

147 ac 14

C. G. Burgoyne's Printing Business, 146-150 Centre St., N. Y.

Office Supreme Court U. S.
FILED.
OCT 24 1892
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1892.

HENRY MORRISON

AGAINST

THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS, and the HONORABLE THOMAS L. NELSON, the Judge of said Court.

Motion for Leave to File a Petition for Prohibition, and for a Rule to Show Cause, and for a Stay of Proceedings.

And Brief Thereon.

And now, October 17th, 1892, comes HENRY MORRISON, a citizen of the United States, and a citizen and resident of the State of Pennsylvania, by ELIHU ROOT, HARRINGTON PUTNAM and SAMUEL B. CLARKE, Esqs., counsellors of this Honorable Court, and moves the Court for leave to file his petition for a writ of prohibition to the District Court of the

United States for the District of Massachusetts, and to the Honorable THOMAS L. NELSON, the Judge of said Court, prohibiting said Court and the said Judge from proceeding further (1) upon a certain injunction decree described in said petition; (2) and upon a certain appraisement described in said petition; (3) and upon a certain stipulation described in said petition; (4) and upon a certain monition described in said petition; (5) and prohibiting said Court and said Judge generally from proceeding further upon a certain libel described in said petition; the said injunction decree, appraisement, stipulation and monition purporting to have been founded on said libel, and said libel having been filed in said District Court August 16, 1892, by the Metropolitan Steamship Company, owner of the steamship "H. F. Dimock," in a cause, civil and maritime, of limitation of liability (as stated in the caption of said libel), against William K. Vanderbilt, owner of the "Alva;" and relating to a collision between said "H. F. Dimock" and said "Alva" July 24, 1892; the petitioner being a sufferer of loss by said collision and a claimant of damages therefor against said steamship company and against said steamship "H. F. Dimock."

Petitioner also moves for a rule to show cause.

Petitioner also moves that, if the rule to show cause is made, it may contain a provision staying all proceedings in said Metropolitan Steamship Company's said cause pending the hearing and decision of this Court upon this petition.

Brief on the Motion.

I.

The proceedings now sought to be prohibited are the same proceedings which are referred to in the same petitioner's petition for a writ of mandamus to the District Court for the Southern District of New York; a motion for leave to file which is made simultaneously herewith.

The petition here has annexed to it the mandamus petition and all the papers annexed to that petition.

Counsel beg leave to refer the Court to the brief on the *mandamus* motion as indicating the nature of the questions involved in this application as well as in that.

In addition, we beg leave to submit the following considerations peculiar to this application.

II.

Proceedings upon the injunction decree ought to be prohibited (1) because the petitioner had no notice of, and no opportunity to be heard upon, the application therefor, and had no notice of, and no opportunity to be heard upon, any of the prior proceedings upon which the injunction decree was founded, but he is, nevertheless, liable to be proceeded against for disregarding said injunction by instituting his suit in the Southern District of New York, as stated in the petition; (2) because under Admiralty Rule 54 the Massachusetts Court was not authorized to make the injunction decree, there not having been a *due* appraisement within the meaning of the rule.

III.

Proceedings upon the appraisement and upon the stipulation and upon the monition ought to be prohibited for the same reasons.

IV.

Proceedings upon the steamship company's libel ought to be prohibited because the District Court of the United States for the Southern District of New York is now the only competent Court for the determination of the questions in the steamship company's libel; (1) the petitioner's cause in that Court having been completely constituted by personal service upon the steamship company, by attachment of the steamship, and by the voluntary appearance of another damage claimant before any valid proceeding was taken in the Massachusetts Court on the steamship company's libel, and before the Massachusetts Court had acquired jurisdiction of any *person* or any *res*; (2) and [it being the meaning and intention of the Limited Liability Act and of Admiralty Rules 54 to 57, that when one Court has acquired full jurisdiction of the questions of limitation and apportionment of liability no other court shall entertain those questions; and (3) the steamship company having taken the steamship "H. F. Dimock" out of the District of Massachusetts, and it having been attached in the petitioner's cause in the Southern District of New York, so that it is not subject to the control of the Massachusetts Court within the meaning of Admiralty Rule 57; and (4) the steamship company having abandoned its cause in the District of Massachusetts.

V.

The rule to show cause should contain a stay of proceedings because the return day of the monition is November 25th, next, and the decision upon this petition cannot probably be obtained before that date, and the petitioner must therefore be put to an election whether he will voluntarily appear in the Massachusetts Court, or run the risk of losing his claim altogether; which election the petitioner ought not to be coerced into making if this petition or so much of it as relates to proceedings upon said monition ought to be granted.

VI.

For prohibitions in somewhat similar cases see:

James vs. London & S. W. R. R. Co., L. R., 7 Ex., 187.

Anonymous, 2 Salk., 553.

ELIHU ROOT.
HARRINGTON PUTNAM.
SAMUEL B. CLARKE.

147 US 14

In the Supreme Court of the United States.

OCTOBER TERM, 1892.

ORIGINAL DOCKET No. .....

HENRY MORRISON

against

THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS, and the Hon. THOMAS L. NELSON, Judge of the said Court.

PETITION FOR PROHIBITION.

C. G. Burgoyne, Walker and Centre Sts., N. Y.

In the Supreme Court of the United States.

OCTOBER TERM, 1892.

ORIGINAL DOCKET NO. ——.

HENRY MORRISON

AGAINST

THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS, and THE HONORABLE THOMAS L. NELSON, the Judge of said Court.

Petition for Prohibition.

TO THE HONORABLE THE SUPREME COURT OF THE UNITED STATES OF AMERICA:

The petition of Henry Morrison against the District Court of the United States for the District of Massachusetts, and against the Honorable THOMAS L. NELSON, Judge of said Court.

Your petitioner respectfully alleges that he is a citizen of the United States of America, and a citizen and resident of the State of Pennsylvania.

I.

Your petitioner further respectfully alleges:

A. That on August 16th, 1892, the Metropolitan Steamship Company, a corporation organized and existing under the laws of the State of Massachusetts, engaged in operating a line of steamers between the cities of New York, in the State of New York, and Boston, in the State of Massachusetts, and having principal places of business in each of said cities, and the owner of the steamship "H. F. Dimock" filed in the District Court of the United States for the District of Massachusetts its libel and petition (as stated in the caption thereof) against William K. Vanderbilt, of the City, County and State of New York, owner of the steamship "Alva," in a cause of limitation of liability, civil and maritime. In said libel the said Metropolitan Steamship Company alleged that on the 24th day of July, 1892, in Pollock Rip Slue, on the Nantucket Shoals in Vineyard Sound, a collision took place between the said steamship "H. F. Dimock" and the said yacht "Alva," whereby the "Alva" was sunk; that said collision was not due to any want of care on the part of said steamship "H. F. Dimock" or those in charge of her, but the collision and the damage occasioned thereby was caused by the gross carelessness and incompetence of the persons in charge of the "Alva;" that the said steamship company desired to contest any liability on account of said collision; that said steamship company feared that suits or libels might be brought against it or against the "Dimock," and damages claimed largely in excess of the value of said vessel and freight then pending; that said steamship company was informed and believed that the "Alva" alone was claimed to be worth $250,000, which is largely in excess of the value of the steamship "Dimock" and freight then pending; that the value of the

"Dimock" at the time of said collision, together with her freight then pending, was less than $150,000; and the said steamship company in said libel thereupon claimed the benefit of the limitation of liability provided for in Sections 4283 and 4284 of the Revised Statutes of the United States. All of which more fully appears in said libel and petition, a copy of which is hereto annexed.

B. That upon the said libel and petition a warrant, sealed with the seal of said District Court of the United States for the District of Massachusetts, and signed by the Clerk of said Court, tested on the 16th day of August, 1892, was issued to the Marshal of the Massachusetts District directing him to cause the said steamship "H. F. Dimock" and pending freight to be appraised on oath by three persons in said warrant named; that on August 17th, 1892, the said Marshal returned said warrant to said District Court, certifying that he had notified the appraisers therein named of their appointment, and had requested of them to attend to the duties assigned them, and that they had attended, and report that they appraised the said steamship at $80,000, and the freight pending at the time of said collision at $2,395.33. All of which more fully appears in the said warrant and the Marshal's return thereof, a copy of which is hereto annexed.

C. That thereupon, and on said 17th day of August, 1892, the said District Court made and entered an order that the said Metropolitan Steamship Company give proper stipulation with sureties for the payment of said appraised value of the interest of said steamship company in the steamship "H. F. Dimock," and pending freight at the time alleged in said petition, into Court whenever the same should be ordered by the Court. All of which more fully appears in the said order, a copy of which is hereto annexed.

D. That thereupon and on said 17th day of August, 1892, the said Metropolitan Steamship Company and Henry M. Whitney and Henry F. Dimock as its sureties filed their stipulation in said District Court whereby they bound themselves in the sum of $82,395.33 unto the said William K. Vanderbilt and all other parties claiming damages in said steamship company's said proceedings, that said steamship company should abide by all orders and decrees, interlocutory or final, of the Court and should pay the amount of the final decree of the Court, and all sums of money that it should be ordered to pay by the final decree of the Court, and consented that if it did not do so execution should forthwith issue against them, their heirs, executors and administrators, jointly and severally, and against their lands, goods and chattels, to the value of the sum in said stipulation mentioned. All of which more fully appears in said stipulation, a copy of which is hereto annexed.

E. That thereupon a monition under the seal of said District Court, signed by its clerk, and tested on said 17th day of August, 1892, was issued out of said District Court to the Marshal of said Massachusetts District, commanding him to give notice to said William K. Vanderbilt and to all persons concerned of the filing of said steamship company's said libel and petition, and further commanding him to cite the said William K. Vanderbilt, and any and all persons claiming damages arising out of said collision, to appear before said District Court on the 25th day of November, 1892, and make due proof of their respective claims; and further commanding him to give notice by serving an attested copy of said monition on said William K. Vanderbilt if found within said Marshal's District, and to give further notice by advertising the same in the "Boston Daily Advertiser" newspaper at least sixty days before the

return day named in said monition; and further commanding him to post a copy of the same notice at the Court House in Boston. All of which more fully appears in the said monition, a copy of which is hereto annexed.

F. That thereupon and on said 17th day of August, 1892, the said District Court made and entered a decree upon the application of said Metropolitan Steamship Company, and therein and thereby it was ordered and decreed as follows:

"It is thereupon ordered and decreed that the said William K. Vanderbilt and all persons claiming damages for any loss, damage or injury arising out of the matters and acts alleged in said libel, be and they are hereby enjoined from prosecution of all and any suit or suits against the libellant or petitioner as owner of said steamship "H. F. Dimock," or against said steamship in respect of any claim or claims arising out of the collision aforesaid, except in these proceedings."

All of which more fully appears in said decree, a copy of which is hereto annexed.

G. That on the 27th day of August, 1892, the said steamship company filed in said District Court an amendment of its said libel, in which amendment it alleged that at the time its said libel and petition was filed, the said steamship "H. F. Dimock" was, and had ever since been, lying in the Port of Boston within the admiralty jurisdiction and process of said District Court.

H. That, as your petitioner is informed and believes, no further different or other proceedings than as above stated have, up to this time, been taken in said District Court upon the said libel and petition of said Metropolitan Steamship Company.

II.

Your petitioner further respectfully alleges:

A. That, on the 30th day of September, 1892, in the District Court of the United States for the Southern District of New York, your petitioner filed his libel against the said Metropolitan Steamship Company, the said steamship "H. F. Dimock," the said William K. Vanderbilt and all other persons claiming damages against the said Metropolitan Steamship Company and said steamship "H. F. Dimock" by reason of the said collision, in a cause, civil and maritime, of apportionment of limited liability pursuant to Section 4284 of the Revised Statutes of the United States. In said libel your petitioner alleged that he was the master in charge of said yacht "Alva" at the time of said collision; that said collision was caused wholly by the negligence of said steamship "H. F. Dimock" and those in charge of her, and was not at all due to any negligence on the part of the "Alva" or those in charge of her; that by said collision your petitioner's own personal property on board of said yacht to the value of upwards of $1,300 was lost and destroyed; and your petitioner in his said libel claimed damages for his said property so lost and destroyed against said steamship company and against said steamship "H. F. Dimock." In his said libel your petitioner further alleged that the said William K. Vanderbilt suffered damages by said collision in an amount in excess of $300,000, and that said Vanderbilt was a claimant for said damages against said steamship company and against said steamship "H. F. Dimock," and that he would, by intervention in your petitioner's cause or otherwise, as he might be advised, seek to enforce his said claim by judicial proceedings. In his said libel your petitioner further alleged that divers other persons suffered loss and destruction of their

property on board the said yacht by said collision, but that whether any of them have made or will make any claim of liability therefor against said Metropolitan Steamship Company or against said steamship "H. F. Dimock," he was not informed and could not state. In said libel your petitioner further alleged that the loss, damage and destruction and injury suffered by your petitioner and by said Vanderbilt, and by all other persons whomsoever, by the said collision, were without the privity or knowledge of said steamship company, the owner of the said steamship "H. F. Dimock;" and that by law the liability of the said steamship company in that behalf does not exceed the amount or value of its interest in said steamship "H. F. Dimock" and her then pending freight. In said libel your petitioner further alleged that the whole value of the steamship "H. F. Dimock" and her freight for the voyage which she was making at the time of said collision is not sufficient to make compensation to your petitioner, to said Vanderbilt and to said other persons who suffered loss and damage of property by said collision, and that your petitioner, said Vanderbilt, and said other sufferers are by law entitled to receive compensation from the owner of said steamship "H. F. Dimock" in proportion to their respective losses only. In said libel your petitioner further alleged that the value of said steamship "H. F. Dimock," at the time of said collision and at the termination of the voyage she was then making, exceeded $200,000, and that her then pending freight exceeded $2,300, and that the fund to be apportioned among the several persons who suffered loss, damage and destruction by said collision, while less than the aggregate losses of all the parties who suffered thereby, and less than the individual loss of said Vanderbilt alone, exceeded $202,300. In said libel your petitioner further alleged that said steamship "H. F. Dimock" had not been libeled or arrested in any Court to answer for the

loss, destruction, damage or injury aforesaid, and that the owner of said steamship had not theretofore been sued in that behalf. All of which more fully appears in said libel, a copy of which is hereto annexed, and an exemplified copy of which your petitioner is ready to produce in this Court.

B. That thereupon and on said 30th day of September, 1892, process under the seal of said District Court for the Southern District of New York, signed by the Clerk thereof, and tested on the said 30th day of September, 1892, was issued out of said District Court of the United States for the Southern District of New York to the Marshal of said Southern District, wherein and whereby the said Marshal was commanded to attach said steamship "H. F. Dimock," and to detain the same in his custody until further order, and to cite the said Metropolitan Steamship Company and the said William K. Vanderbilt and all other persons claiming to have suffered loss, damage, destruction or injury, by reason of said collision, to appear before said District Court on a day named, then and there to answer the said libel and to make their allegations in that behalf; that on said 30th day of September, 1892, at the City of New York, within the said Southern District of New York, the said Marshal, in obedience to said process, attached the said steamship "H. F. Dimock," and on the 1st day of October, 1892, the said Marshal, at the City of New York, within the said Southern District of New York, personally served the said process upon said Metropolitan Steamship Company by exhibiting the original process to and leaving a copy thereof with Henry F. Dimock, the treasurer and agent of said steamship company, and said Marshal on the 7th day of October, 1892, returned the said process to the said District Court, certifying that he had attached the said steamship and had personally served said steamship

company in manner aforesaid, and that the respondent William K. Vanderbilt had appeared in the case by his proctors. All of which more fully appears in said process and the return of said Marshal endorsed thereon, a copy whereof is hereto annexed, and an exemplified copy whereof and of said Vanderbilt's appearance your petitioner is ready to produce in this Court.

C. That thereafter such proceedings were had in said District Court for the Southern District of New York in your petitioner's said cause that on October 7th, 1892, your petitioner's libel was dismissed "as improperly filed," and copies of such proceedings are hereto annexed; that your petitioner has applied or simultaneously herewith will apply to this Court for a writ of mandamus directing said District Court for the Southern District of New York to reinstate your petitioner's said cause, and a copy of your petitioner's petition in that behalf is hereto annexed.

III.

Your petitioner further respectfully alleges that he is a claimant of damages arising out of said collision against said Metropolitan Steamship Company and against the said steamship "H. F. Dimock," and that it is claimed by said steamship company that, at the time of filing his said libel in said District Court for the Southern District of New York and of the issuance and execution of the process of that Court as aforesaid, your petitioner was duly informed of and had notice. of the injunction decree of the District Court of the United States for the District of Massachusetts hereinbefore mentioned, so that, if the said injunction decree be valid in law and binding upon your petitioner, he is liable to be proceeded against by the said last mentioned District Court for disregarding and violating said injunction decree.

IV.

Your petitioner further respectfully shows:

A. That he had no knowledge, information or notice of any kind whatsoever of said injunction decree or of any of the prior proceedings upon the said libel or petition of said Metropolitan Steamship Company in said District Court of the United States for the District of Massachusetts until after said injunction decree was made and entered.

B. That no notice of any kind whatsoever of the application of the said Metropolitan Steamship Company for said injunction decree, or of the filing of its said libel or of said appraisement and stipulation proceedings, was in fact given to, or received by, your petitioner, or was given to, or received by, said Vanderbilt, or was given to, or received by, any other claimant of damages arising out of said collision until after said injunction decree had been entered; and that no notice of said application for said injunction decree or of the filing of said libel, or of said appraisement and stipulation proceedings of any kind whatever, was required by said District Court of the United States for the District of Massachusetts to be given to your petitioner, or to said Vanderbilt, or to any other person whomsoever; but said District Court in the matter of said appraisement and stipulation proceedings, and of said injunction decree, proceeded wholly *ex parte* and it entertained said application for said injunction decree, granted it and made and entered said injunction decree without giving your petitioner, or said Vanderbilt, or any other claimant of damages, arising out of said collision, any opportunity to be heard.

C. That your petitioner has not personally been within the State or District of Massachusetts since the

15th day of August, 1892, and has not been personally served with any process of said District Court for the District of Massachusetts within said district or elsewhere, and has not appeared in said Metropolitan Steamship Company's said cause or proceeding, and has not made any claim therein.

D. That the said Vanderbilt has not personally been within the State or District of Massachusetts since the 15th day of August, 1892, and has not been personally served with any process of said District Court for the District of Massachusetts within said district, and has not appeared in said Metropolitan Steamship Company's said cause or proceedings and has not made any claim therein.

E. Upon information and belief, that no other claimant of damages arising out of said collision has been personally served within the District of Massachusetts with any process of said District Court of the United States for the District of Massachusetts, or has appeared or made any claim in said Metropolitan Steamship Company's said cause or proceeding.

F. That the said Metropolitan Steamship Company did not in its said libel and petition, and has not otherwise, surrendered the said steamship "H. F. Dimock" or its interest therein, or the freight for the voyage said steamship "H. F. Dimock" was making at the time of said collision, to said District Court for the District of Massachusetts (unless the proceedings hereinbefore set forth amount in law to a surrender which your petitioner is advised they do not); and that said District Court for the District of Massachusetts has never attached said steamship "H. F. Dimock" under the said libel and petition of said steamship company or issued any process against said steamship company, or in any way acquired jurisdiction thereof, or of said freight.

G. That, prior to the attachment of said steamship "H. F. Dimock," and the personal service of said Metropolitan Steamship Company in the Southern District of New York, in your petitioner's said cause in said District Court of the United States for the Southern District of New York, the said District Court of the United States for the District of Massachusetts did not make any order discharging said steamship company or said steamship "Dimock" from your petitioner's damage claim (unless the proceedings hereinbefore set forth have that effect in law which your petitioner is advised they do not), or allowing said steamship "Dimock" to go out of the District of Massachusetts beyond the reach of said District Court's process and beyond its control; but said steamship "H. F. Dimock" was navigated by its owner said Metropolitan Steamship Company from Boston, in the District of Massachusetts, to the City of New York, in the Southern District of New York, without any authority whatsoever from said District Court for the District of Massachusetts (unless the proceedings hereinbefore set forth amount in law to authority in that behalf, which your petitioner is advised they do not).

V.

Your petitioner further respectfully shows to this Honorable Court that he cannot present the matters and things herein set forth to the judgment of said District Court of the United States for the District of Massachusetts without personally appearing in said Court and submitting to its jurisdiction, and that a personal appearance in that Court would or might be construed to be a waiver on your petitioner's part of his objections to the right of said District Court to proceed.

VI.

And your petitioner further respectfully alleges, on the advice of his counsel and his own behalf, that the said District Court of the United States for the District of Massachusetts had no power, authority or jurisdiction to make said injunction decree, and has now no authority, jurisdiction or power to proceed further thereupon; and, therefore, your petitioner humbly prays that the said District Court and the Honorable THOMAS L. NELSON, the Judge thereof, may be prohibited, by a writ of prohibition issuing out of this Honorable Court, from proceeding in anywise further upon said injunction decree.

Your petitioner further respectfully alleges, on the advice of his counsel and his own belief, that the said District Court of the United States for the District of Massachusetts had no power, authority or jurisdiction to cause said appraisement to be made in the manner aforesaid, or to allow the said stipulation or to issue the said monition, and has now no authority, jurisdiction or power to proceed further upon said appraisement, or upon said stipulation, or upon said monition; and therefore your petitioner humbly prays that the said District Court and the Honorable THOMAS L. NELSON, the Judge thereof, may be prohibited, by a writ of prohibition issuing out of this Honorable Court, from proceeding in any wise further upon said appraisement, or upon said stipulation, or upon said monition.

C. And your petitioner further respectfully alleges, upon the advice of his counsel and his own belief, that, by reason of the matters aforesaid, the District Court of the United States for the Southern District of New York is now the only competent Court for the determination of the matters

and things set forth in said Metropolitan Steamship Company's said libel and in your petitioner's said libel, and that said District Court of the United States for the District of Massachusetts has no authority, jurisdiction or power to proceed further upon said Metropolitan Steamship Company's said libel and petition; and your petitioner humbly prays that the said District Court of the United States for the District of Massachusetts and the Honorable THOMAS L. NELSON, the Judge thereof, may be prohibited generally from proceeding in anywise further upon the said libel and petition of the said Metropolitan Steamship Company.

And your petitioner further humbly prays that the said District Court of the United States for the District of Massachusetts and the Honorable THOMAS L. NELSON, the Judge thereof, may be prohibited in such further, different or other manner as to this Court may seem right in the premises.

And your petitioner further respectfully shows that the return day of the said monition issued out of said District Court for the District of Massachusetts is the 25th day of November next; that this application probably cannot be heard and decided by this Court before that time; that your petitioner is likely to be put to an election before the decision of this Court hereon can be obtained, whether he will personally appear in said District Court for the District of Massachusetts and assert his claim in said Metropolitan Steamship Company's said proceeding, or whether by refraining from doing so he will run the risk of losing his claim altogether; that if this petition ought to be granted your petitioner ought not to be put to any such election; and therefore your petitioner humbly prays that in the rule to show cause to be issued herein there may be a provision staying all proceedings by said District Court of the United States for the District of Massachusetts in the Metropolitan Steamship Company's

said cause, pending the hearing and decision of this Court upon this petition.

HENRY MORRISON,
By G. E. P. HOWARD,
His Proctor.

ELIHU ROOT,
HARRINGTON PUTNAM,
SAMUEL B. CLARKE,
Of Counsel.

SOUTHERN DISTRICT OF NEW YORK, }
City and County of New York, } ss.:

G. E. P. HOWARD, being duly sworn, says: I am the proctor of the said Henry Morrison in the proceedings in the District Court of the United States for the Southern District of New York, in the foregoing petition mentioned. The said petition has been authorized by said Morrison.

I make this affidavit on said Morrison's behalf because he is now out of this country, having gone the first part of this month to England on business, expecting to be absent a few weeks only.

As said Morrison's proctor, I am familiar with all the proceedings in the said District Court for the Southern District of New York. I am also familiar with the proceedings in the District Court for the District of Massachusetts and the other matters set forth in said petition, such familiarity arising out of (1) a personal examination of the copies of the proceedings of the Massachusetts Court presented by the Metropolitan Steamship Company in the proceedings in the New York Court; (2)

by a personal examination of certified copies of the Massachusetts proceedings, and of a certified copy of the docket entries of those proceedings; (3) by an examination of the affidavits made by said Morrison, said Vanderbilt and Henry F. Dimock, the treasurer and agent of the Metropolitan Steamship Company, which affidavits were filed in said proceedings in said New York Court; (4) and by personal conversation with the said Morrison.

I have read the foregoing petition and know the contents thereof. The matters therein stated are true to the best of my knowledge, information and belief.

G. E. P. HOWARD.

Subscribed and sworn to before me this 15th day of October, 1892.

HORATIO S. RUBENS,
Notary Public,
New York County.

[L. S.]

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In the Supreme Court of the United States.

OCTOBER TERM, 1892.

Original Docket No.____

HENRY MORRISON

AGAINST

THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK, and the HONORABLE ADDISON BROWN, the Judge of the said Court.

Petition for Mandamus.

TO THE HONORABLE THE SUPREME COURT OF THE UNITED STATES OF AMERICA.

The petition of Henry Morrison against the District Court of the United States for the Southern District of New York, and against the Honorable ADDISON BROWN, the Judge of said Court.

Your petitioner respectfully alleges that he is a citizen of the United States of America, and a citizen and resident of the State of Pennsylvania.

I.

Your petitioner further respectfully alleges :

A. That on the 30th day of September, 1892, in the District Court of the United States for the Southern District of New York, your petitioner by G. E. P. Howard, Esq., his proctor, filed his libel in a cause civil and maritime of apportionment of limited liability pursuant to Section 4284 of the Revised Statutes of the United States against the Metropolitan Steamship Company (a corporation organized and existing under the laws of Massachusetts, engaged in operating a line of steamers between the cities of Boston in the State of Massachusetts and New York in the State of New York, and the owner of the steamship "H. F. Dimock," against said steamship "H. F. Dimock" and against William K. Vanderbilt, and all other persons claiming damages against said steamship company or against said steamship "H. F. Dimock" by reason of the collision in said libel described between said steamship "H. F. Dimock" and the yacht "Alva," owned by said Vanderbilt, which collision resulted in the sinking of the "Alva." In said libel your petitioner alleged that he was the master in charge of the "Alva" at the time of the collision; that the collision was caused wholly by the negligence of the steamship "H. F. Dimock" and those in charge of her, and was not at all due to any negligence on the part of the "Alva" or those in charge of her; that by said collision your petitioner's own personal property on board of the "Alva," of the value of upwards of $1,300, was lost and destroyed; and your petitioner in his said libel claimed damages for his said property so lost and destroyed against said Metropolitan Steamship Company and against said steamship "H. F. Dimock." In his said libel your petitioner further alleged that the said William K. Vanderbilt suffered damages by the collision in an

amount in excess of $300,000, and that said Vanderbilt was a claimant for said damages against said steamship company and against said steamship "H. F. Dimock," and that he would, by intervention in your petitioner's cause or otherwise as he might be advised, seek to enforce his claim by judicial proceedings. In his said libel your petitioner further alleged that divers other persons suffered loss and destruction of their property on board the said yacht by said collision, but that whether any of them have made or will make any claim of liability therefor against said steamship company or against said steamship "H. F. Dimock" he was not informed and could not state. In said libel your petitioner further alleged that the loss, damage, destruction and injury suffered by your petitioner and by said Vanderbilt and by all other persons whomsoever by the said collision were without the privity or knowledge of said steamship company ,the owner of said steamship "H. F. Dimock," and that by law the liability of the said steamship company in that behalf does not exceed the amount or value of its interest in said steamship "H. F. Dimick," and her then pending freight. In said libel your petitioner further alleged that the whole value of the steamship "H. F. Dimock" and her freight for the voyage which she was then making, at the time of said collision is not sufficient to make compensation to your said petitioner, to said Vanderbilt and to said other persons who suffered loss and damage of property by said collision; and that your petitioner, said Vanderbilt, and said other sufferers are by law entitled to recive compensation from the owner of said steamship "H. F. Dimock" in proportion to their respective losses only. In said libel, your petitioner further alleged that the value of said steamship "H. F. Dimock" at the time of said collision and at the termination of the voyage she was then making exceeded $200,000, and that her then pending freight exceeded $2,300; and that the fund to

be apportioned among the several persons who suffered loss, damage and destruction by said collision, while less than the aggregate losses of all the parties who suffered thereby, and less than the individual loss of said Vanderbilt, alone exceeded $202,300. In said libel your petitioner further alleged that said steamship "H. F. Dimock" had not been libeled or arrested in any court to answer for the loss, damage or injurry suffered by said collision, and that the owner of said steamship had not theretofore been sued in that behalf. All of which more fully appear in said libel, a copy of which is hereto annexed.

B. That, thereupon, your petitioner having given the usual security for costs in the sum of $250, as required by the rules and practice of said District Court, process under the seal of said District Court for the Southern District of New York, signed by the Clerk thereof and tested on the said 30th day of September, 1892, was issuedout of said District Court to the Marshal of said Southern District of New York, wherein and whereby the said Marshal was commanded to attach said steamship "H. F. Dimock" and to detain the same in his custody until further order, and to cite the said Metropolitan Steamship Company and the said William K. Vanderbilt and all other persons claiming to have suffered damages, loss, destruction or injury by reason of said collision, to appear before said District Court on a day named, there and then to answer the said libel, and to make their allegations in that behalf; that on said 30th day of September, 1892, at the City of New York, within the Southern District of New York, the said Marshal, in obedience to said process, attached said steamship "H. F. Dimock," and on the first day of October, 1892, the said Marshal, at the City of New York, within the said District of New York, personally served the said procers upon said Metropolitan Steamship Company by

exhibiting the original process to and leaving a copy thereof with Henry F. Dimock, treasurer and agent of said steamship company, and said Marshal on the 7th day of October, 1892, returned said process to the said District Court, certifying that he had attached the said steamship, and had personally served said steamship company in manner aforesaid, and that the respondent William K. Vanderbilt had appeared in the cause by his proctors. All of which more fully appears in said process, and the return of said Marshal endorsed thereon, a copy whereof is hereto annexed.

The appearance of said Vanderbilt by his proctors in said cause was entered and filed with the Clerk of said Court on said first day of October, 1892, the said Vanderbilt then and there giving the usual security for costs in the sum of $100, required by the rules and practice of said District Court.

II.

And your petitioner further respectfully alleges:

A. That thereafter said Metropolitan Steamship Company, by its proctors, moved said District Court to dismiss said libel as to the said steamship "H. F. Dimock," and as to the said steamship company, and to set aside the process issued against said steamship "H. F. Dimock," and for such other and further relief as might be just.

B. That thereafter said motion came on to be heard before said District Court and was argued by counsel for your petitioner, for said Vanderbilt, and for said steamship company.

Whereupon and on all the pleadings and proceedings in the cause, and on certain affidavits submitted on behalf of your petitioner, and on certain other affidavits submitted on behalf of said steamship company and

said steamship "H. F. Dimock," and on certain copies of proceedings in the District Court of the United States for the District of Massachusetts in said affidavits mentioned, the said District Court of the United Sates for the Southern District of New York vacated said process, set aside the service thereof on the said Metropolitan Steamship Company, and released and set free the said steamship "H. F. Dimock" from the attachment under said process, and dismissed your petitioner's said libel "*as improperly filed;*" and so declined to entertain and adjudicate your petitioner's said cause.

D. That the only pleadings and proceedings in said cause which have been taken and are referred to in said order are your petitioner's said libel, the security for costs given by your petitioner on filing the same, the said process issued thereon, the said return of the Marshal to said process, and the appearance of said Vanderbilt and his giving security for costs as hereinbefore set forth; that copies of all the affidavits and proceedings in the District Court of the United States for the District of Massachusetts, recited in said order, and of said order and of the opinion referred to therein, as a part thereof, and of an order correcting a clerical error, are hereto annexed.

III. And your petitioner further respectfully alleges, on the advice of his counsel and his own belief,

That the said order of said District Court of the United States for the Southern District of New York, and its refusal thereby to entertain your petitioner's said libel and proceed thereupon in the usual manner, was contrary to law and the right of your petitioner.

Wherefore, your petitioner humbly prays that, by a writ of mandamus, issuing out of this Honorable Court, the said District Court of the United States for the Southern District of New York, and the Honorable An-

DISON BROWN, Judge of said District Court, may be directed, notwithstanding the matters in said affidavits contained, and notwithstanding the proceedings in the District Court of the United States for the District of Massachusetts in said affidavits mentioned to vacate its said order and to reinstate your petitioner's said cause, and to proceed upon your petitioner's said libel according to law.

HENRY MORRISON,
By G. E. P. HOWARD,
His Proctor.

ELIHU ROOT,
HARRINGTON PUTNAM,
SAMUEL B. CLARKE,
Of Counsel.

SOUTHERN DISTRICT OF NEW YORK, } s.s.:
City and County of New York, }

G. E. P. HOWARD, being duly sworn, says: I am the proctor of the said Henry Morrison in the proceedings in the District Court of the United States for the Southern District of New York in the foregoing petition mentioned, and am familiar with those proceedings. The said petition has been authorized by said Morrison. I make this affidavit on his behalf, because he is now out of this country, having gone the first part of this month to England on business, expecting to be absent a few weeks only.

I have read the foregoing petition and know the contents thereof. The matters therein stated are true to the best of my knowledge, information and belief.

G. E. P. HOWARD.

Subscribed and sworn to before me this 15 day of October, 1892.

HORATIO S. RUBENS,
[L. S.] Notary Public,
New York County.

1.

To the Honorable ADDISON BROWN, Judge of the District Court of the United States for the Southern District of New York:

The libel of Henry Morrison against the Metropolitan Steamship Company, the steamship "H. F. Dimock," William K. Vanderbilt, and all other persons claiming damages against said Metropolitan Steamship Company, or said steamship "H. F. Dimock," by reason of the collision hereinafter described in a cause, civil and maritime, of apportionment of limited liability pursuant to U. S. Revised Statutes, Section 4284, alleges and propounds as follows:

FIRST. That the libellant is a master mariner of many years' experience, domiciled at Philadelphia, Pa., and at the time of the said collision he was and for a long time prior thereto had been master of the yacht "Alva," said yacht being a steam, pleasure yacht of 1,151 tons gross, and 600 tons, net measure, duly registered as a sea-going vessel of the United States at the Custom House of the Port of New York.

SECOND. That William K. Vanderbilt, domiciled in the City, County and State of New York, was, at the time of said collision, and for a long time prior thereto had been, sole owner of said yacht "Alva."

THIRD. That the Metropolitan Steamship Company is, and at the times hereinafter mentioned was, a corporation duly organized, existing and carrying on business as a corporation under the laws of Massachusetts, and having its principal places of business in the Cities of New York and Boston; and said company is, and at the time hereinafter mentioned was, the sole owner of the steamship "H. F. Dimock."

FOURTH. That the said steamship "H. F. Dimock" is a swift schooner-rigged steel single-screw steamer of about 2,000 tons net measure, about 280 feet in length, 40 feet beam, and 29 feet depth of hold, and she is a registered vessel of the United States. She is engaged in coasting transportation between the ports of New York and Boston, and on the occasion of the said collision was bound from New York to Boston on one of her regular trips.

FIFTH. That on the morning of July 24th, 1892, said yacht with said Vanderbilt and his guests on board, was proceeding at sea on a voyage or cruise from Bar Harbor, Maine, to Newport, Rhode Island, in charge of this libellant as master, and with a full company of officers and crew. When the yacht had approached the Cape Cod coast, the weather became hazy, and shortly after 6 A. M. her engines were slowed. She was then near Chatham Whistling Buoy. The fog lightened and the yacht proceeded at moderate speed. Afterwards the fog closed in thicker and lightened again several times, the yacht being repeatedly stopped because of the fog. The "Alva" was navigated slowly until about 7:50 A. M., when the fog settled down very thick, and this libellant, having seen that vessels were anchored in close proximity, determined to anchor the yacht until she could proceed with safety. The "Alva" was then anchored with the port anchor and twenty fathom of chain, and lay so till the collision hereinafter mentioned. The place of anchorage was at the entrance to Nantucket Sound; the bell buoy of Pollock Rip Slue bearing north northeast, and distant about three-eighths of a mile, and Pollock Rip Slue Lightship bearing southwest by south, and distant about one and three-tenths miles; the wind being light from the southwest with a force of about five miles an hour, and the tide running about northeast by east with a force of about three miles an hour.

SIXTH. That the channel in said slue, between the bell buoy and the lightship, is specially dangerous in fog, and for that reason vessels going through the shoals are frequently compelled to anchor in Pollock Rip Slue until the weather clears up, so as to enable them to proceed. With the southwest wind then prevailing, sailing vessels could not safely beat to the westward, but would be compelled to anchor.

SEVENTH. That, while at anchor in the Slue, the libellant and other officers of the "Alva" took all usual and prescribed precautions to give notice of her position to other vessels, her bell, a large and far-sounding one, being rung rapidly by one of the quartermasters under the libellant's immediate supervision for about seven or eight seconds at intervals of not more than thirty seconds, until the collision occurred.

EIGHTH. After the "Alva" had lain at anchor about thirty-five or forty minutes ringing her bell as aforesaid, the weather all the time being dense fog, the said steamship "H. F. Dimick" collided with the yacht, striking her heavily on the port side about forty feet abaft the cathead, cutting her down below the water line and sinking her within a few minutes.

NINTH. Said collision was not caused by any neglect or fault of libellant or of any of those on board of and having charge of the said yacht "Alva," but was wholly due to the fault of those in charge of the steamship "H. F. Dimock" in that, among other things: 1. The said "Dimock" was proceeding in Pollock Rip Slue, a place of the character aforesaid, in a dense fog at an excessive and immoderate speed. Libellant is informed and believes and charges that the speed of the "Dimock" at the time of the collision was not less than ten knots an hour. 2. That the said steamship did not have any lookout properly stationed or attentive

to his duties. 3. That said steamship did not promptly stop or change her course as soon as the bell of the yacht was heard or should have been heard. 4. That she did not steer her course clear of the yacht. 5. That she did not stop or reverse her engine in time to avoid collision. 6. That while the "Dimock" was so proceeding where vessels in great numbers are very likely to be met, and where vessels are frequently compelled to anchor, she did not take ordinary precautions to avoid a collision. 7. That she ought to have anchored and not attempted to proceed through Pollock Rip Slue till the fog lifted or lightened.

TENTH. That by the said collision, the yacht and her boilers, engines, tackle, apparel, equipment and furniture, and the personal effects of said Vanderbilt, became and are a complete wreck and total loss; that as this libellant is informed and believes it has been impossible to raise the yacht, and she is now and at all times since the collision has been of very small value; that said Vanderbilt, after public advertisement and using all reasonable and proper means to procure as large a price as possible, has sold the said wreck at public auction, realizing on such sale the sum of $3,500 only; that immediately prior to said collision, said yacht was as libellant is informed and believes, of the fair value of at least $300,000, and the personal effects of said Vanderbilt lost as aforesaid were of more than $5,000 in value; and by the collision aforesaid said Vanderbilt was damaged in an amount exceeding $300,000, but what precise amount this libellant does not know; that, as libellant is informed and believes, said Vanderbilt has notified said steamship company and its officers that he will hold that company responsible for the loss and damage so suffered by him, and he will, by intervention herein or otherwise, as he may be advised, seek to enforce such claim by judicial proceedings.

ELEVENTH. That at the time of the said collision this libellant had on board of said yacht his own personal effects and property as follows:

LIST OF PERSONAL EFFECTS OF HENRY MORRISON ON YACHT "ALVA," LOST BY THE COLLISION, AND THE VALUE THEREOF.

1 Double Pilliard double-arched sextant, by Troughton & Sons, London	$150 00
1 Sir Wm. Thompson Dipping Needle	50 00
1 " Deflector	50 00
Protractors, Rules, &c	25 00
Books, Maps, &c	200 00
1 Overcoat	60 00
1 do.	45 00
1 do.	35 00
1 Dress Suit	60 00
1 new business suit	45 00
1 " " "	45 00
1 " " "	40 00
1 partly worn business suit	20 00
1 " " " "	20 00
1 " " " "	20 00
1 new Uniform suit	32 00
1 partly worn	20 00
1 " "	15 00
1 Mackintosh	18 00
1 Oil Skin Coat	5 00
1 " Hat	2 50
1 Rubber Boots	4 50
1 Doz. White Shirts	24 00
3 " Collars	9 00
Shirt Studs and Trinkets	15 00
2 Doz. Cuffs	6 00
1 Doz. Silk Undershirts, 3.50	42 00
1 " Cotton Drawers	12 00
6 Cotton Night Shirts	6 00

2 Doz. Socks, .80	19 20
6 Neck Handkerchiefs, .50	3 00
2 Doz. Pocket Handkerchiefs, .40	9 60
6 suits night Flannels (Pajamas), 6.00	36 00
1 Umbrella	7 00
1 "	5 00
200 Cigars	20 00
2 pr. new Shoes, 7.50	15 00
2 " " " 5.00	10 00
1 " partly worn	4 00
1 " " "	3 00
1 Rug	10 00
1 Hat	3 00
4 lbs. Tobacco, 1.50	6 00
1 Meerschaum pipe, 150 and upwards years old	
1 "	10 00
1 Trunk	10 00
1 Portmanteau	7 00
1 Hand Bag	3 00
5 suits Merino Underclothes, 10.00	50 00
	$1,306 80

all of which by the collision aforesaid were wholly lost and destroyed, thereby damaging this libellant and his property in the sum of $1,300 and upwards.

TWELFTH. That divers other persons suffered loss and destruction of their property on board of said yacht by the collision aforesaid, but whether any of them have made or will make any claim of liability therefor against said Metropolitan Steamship Company or against said steamship "H. F. Dimock," this libellant is not informed and cannot state.

THIRTEENTH. That as this libellant is informed and believes, and therefore alleges, the loss, damage, destruction and injury suffered by this libellant and by

said Vanderbilt and by all other persons whomsoever, by the collision aforesaid, were without the privity or knowledge of said Metropolitan Steamship Company, the owner of said steamship "H. F. Dimock;" and by law the liability of said Metropolitan Steamship Company, in respect of all the matters aforesaid, does not exceed the amount or value of its interest in said steamship "H. F. Dimock" and her then pending freight.

FOURTEENTH. That the whole value of said steamship "H. F. Dimock" and her freight for the voyage which she was making, as aforesaid, is not sufficient to make compensation to this libellant, to said Vanderbilt, and to each of the persons who suffered loss, damage and destruction of property by the collision aforesaid; and this libellant, said Vanderbilt, and said other sufferers are by law entitled to receive compensation from the owner of said steamship "H. F. Dimock," in proportion to their respective losses only.

FIFTEENTH. That, as this libellant is informed and believes, the value of said steamship "H. F. Dimock," at the time of said collision, and at the termination of the voyage she was then making, exceeded $200,000, and her then pending freight exceeded $2,300; and this libellant, therefore, alleges and charges the fact to be that the amount to be apportioned among the several persons who suffered loss, damage and destruction by the collision aforesaid, while less than the aggregate losses of all the persons who suffered thereby, and less than the individual loss of said Vanderbilt aforesaid, exceeds $202,300.

SIXTEENTH. That said steamship "H. F. Dimock," as libellant is informed and believes, has not been libelled or arrested in any court to answer for the loss, destruction damage or injury aforesaid, and the said owner

of said steamship has not heretofore been sued in that behalf.

SEVENTEEN. That, as this libellant is informed and believes, the said steamship "H. F. Dimock" has already or shortly, will resume, her regular trips between the ports of New York and Boston, and said steamship is now within this district and within the jurisdiction of this Court, and subject to the control thereof for the purposes of this proceeding, and she can be found within this district and attached by the Marshal during the currency of the process to be issued upon this libel.

EIGHTEENTH. That all and singular the premises are true and within the admiralty and maritime jurisdiction of this Honorable Court.

WHEREFORE, libellant prays that this Court will proceed in due course to ascertain and establish the amount of loss and damage suffered in the premises by this libellant, by said Vanderbilt and by all other persons who may make any claim of liability therefor against said Metropolitan Steamship Company or against said steamship "H. F. Dimock;" that this Court will also proceed in due course to ascertain and establish the value of said steamship "H. F. Dimock" and her then pending freight; that this Court will also proceed in due course to ascertain and establish the proportionate amount of compensation for the matters aforesaid which this libellant is entitled to receive from the owner of the said steamship "H. F. Dimock," and to decree the payment thereof either against the said Metropolitan Steamship Company or against said steamship "H. F. Dimock," or both, as may be lawful and proper; and that this Court grant to the libellant such further and different relief in the premises as in law and justice he may be entitled to receive; and

libellant further prays that process in due form of law may issue against the said steamship "H. F. Dimock," her engines, boilers, &c., and that she may be condemned and sold to pay the damages aforesaid; and that the said Metropolitan Steamship Company and said Vanderbilt, and all other persons claiming to have suffered loss, damage, destruction or injury by reason of the collision aforesaid, may be cited in due form to appear and answer all and singular the matters aforesaid and to propound and prove their claims in that behalf, and to stand to, abide and perform the decree of the Court thereupon.

HENRY MORRISON.

Subscribed and sworn to before me this 9th day of September, 1892.

HORATIO S. RUBENS,
Notay Public,
New York County.

G. E. P. HOWARD,
Proctor for Libellant,
35 Wall Street,
N. Y. City.

CITY, COUNTY AND STATE OF NEW YORK, Southern District of New York, } ss.:

Personally appeared before me, the subscriber, on the 9th day of September, 1892, HENRY MORRISON, who subscribed the foregoing libel or petition in my presence, and the said Morrison being by me first duly sworn, upon his oath says that the allegations of the

foregoing libel by him subscribed are true according to the best of his knowledge, information and belief.

Witness my hand and notarial seal this
9th day of September, A. D. 1892.

[SEAL.] HORATIO S. RUBENS,
Notary Public,
New York County.

[ENDORSED:]

U. S. District Court, Southern District of New York. Henry Morrison vs. Metropolitan Steamship Co. Steamship "H. F. Dimock" and others. Libel. G. E. P. Howard, Libellant's Proctor, 35 Wall St., N. Y. City. Filed Sept. 30, 1892.

2.

I do hereby certify that on the 30th day of September, 1892, at the City of New York, in my district, and in obedience to the within monition, I attached the within-named steamer "H. F. Dimock," her engines, etc., and on the 1st day of October, inst., at said city, in said district, I personally served the within monition upon the within-named respondent, the Metropolitan Steamship Company, by delivering to and leaving with H. F. Dimock, treasurer and agent of said company, a copy of said monition, and at the same time exhibiting to him the within original; and upon the same day service of said monition upon the within-named respondent William K. Vanderbilt was admitted by Messrs. Root & Clarke, his proctors, as appears by such admission hereunto annexed.

JOHN W. JACOBUS,
U. S. Marshal.

New York, October 7, 1892.

HENRY MORRISON

vs.

STEAMSHIP "H. F. DIMOCK" ET AL.

OCTOBER 1, 1892.

TO THE MARSHAL OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK:

DEAR SIR—We have to-day entered our appearance in this case for respondent William K. Vanderbilt, in the office of the Clerk of the Court. We hereby admit service of the process in your hands, and it will not be necessary for you to serve Mr. Vanderbilt personally.

Very truly yours,
ROOT & CLARKE.

SOUTHERN DISTRICT OF NEW YORK, ss.:

THE PRESIDENT OF THE UNITED STATES OF AMERICA TO THE MARSHAL OF THE SOUTHERN DISTRICT OF NEW YORK:

Whereas, a libel *in rem* and *in personam* hath been filed in the District Court of the United States for the Southern District of New York on the 30th day of September, in the year of our Lord one thousand eight hundred and ninety-two, by Henry Morrison against the Metropolitan Steamship Company and the steamship "H. F. Dimock" and "William K. Vanderbilt," and all persons claiming damages against the said Metropolitan Steamship Company or the said steamship "H. F. Dimock" by reason of the collision in said libel described in a cause, civil and maritime, of apportionment of limited liability, pursuant to United States Revised Statutes, Section 4284, for the reasons and causes in the said libel mentioned, and praying that process in due form of law may issue against the said steamship "H. F. Dimock," her tackle, boilers, &c., and that she may be condemned and sold to pay the damages occasioned by said collision; and that said Metropolitan Steamship Company, owner of said steamship "H. F. Dimock," that said "William K. Vanderbilt" and all persons claiming to have suffered loss, damage, destruction or injury by reason of the said collision may be cited in due form to appear and answer all and singular the matters propounded in said libel, and to propound and prove their claims in that behalf, and to stand to, abide and perform the decree of the Court thereupon:

You are therefore hereby commanded to attach the said steamship "H. F. Dimock," her tackle, boilers, &c., and to detain the same in your custody until the further order of the Court respecting the same, and to give due notice to all persons claiming the same or

knowing or having anything to say why the same should not be condemned and sold, pursuant to the prayer of the said libel, that they be and appear before the said Court, to be held in and for the Southern District of New York on the 18th day of October, 1892, at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same and to make their allegations in that behalf. And we do hereby further empower and strictly charge and command you, the said Marshal, that you cite and admonish the said Metropolitan Steamship Company, the said William K. Vanderbilt, and all other persons claiming to have suffered loss, damage, destruction or injury by reason of the collision in said libel mentioned, if found in your district, to be and appear before said District Court on the said 18th day of October, 1892, at the United States Court rooms in the City of New York, then and there to answer the said libel and to make their allegations in that behalf.

And have you then there this writ, with your return thereon.

Witness the Honorable ADDISON BROWN, Judge of said Court, this 30th day of September, in the year of our Lord one thousand eight hundred and ninety-two, and of our independence the one hundred and seventeenth.

SAMUEL H. LYMAN,

[SEAL.] Clerk.

[ENDORSED:]

U. S. District Court, Southern District of N. Y. Henry Morrison vs. Metropolitan Steamship Co., Steamship "H. F. Dimock" and others. Process *In Rem* and *In Personam*. I hereby depute Mark Trautfield to serve the within process. John W. Jacobus, U. S. Marshal. N. Y., September 30, 1892. Filed Oct. 7th, 1892.

3.

U. S. DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

HENRY MORRISON

AGAINST

METROPOLITAN STEAMSHIP COMPANY, STEAMSHIP H. F. DIMOCK, WILLIAM K. VANDERBILT, and others.

TO THE CLERK OF THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK:

Please enter our appearance as proctors for respondent William K. Vanderbilt in this suit.

New York, October 1st, 1892.

ROOT & CLARKE,
32 Nassau Street,
New York City.

[ENDORSED.]

U. S. District Court. So. Dist. N. Y. Henry Morrison vs. Metropolitan S. S. Co., S. S. H. F. Dimock *et al.* Appearance of respondent Vanderbilt. Root & Clarke, 32 Nassau St., N. Y. City. Filed Oct. 1, 1892.

4.

U. S. DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

HENRY MORRISON
AGAINST
Steamship "H. F. DIMOCK," &c.,
METROPOLITAN STEAMSHIP COMPANY
ET AL.

On the annexed affidavit of Edward G. Benedict and on all the pleadings and proceedings in this suit,

Let the above-named libellant show cause before me at my chambers, in building 233 East Forty-eighth street, in the City of New York, on the first day of October, 1892, at 7:30 P. M. o'clock on that day, why an order should not be made dismissing the libel herein as to the "H. F. Dimock" and the Metropolitan Steamship Company, and setting aside the process issued against the "H. F. Dimock" in pursuance of the prayer of said libel, and why the said Metropolitan Steamship Company should not have such other or further order or relief as may be just.

Service of a copy of this order and affidavit on libellant's proctors personally this day, before 3 P. M., shall be sufficient service.

October 1, 1892.

ADDISON BROWN,
U. S. D. J.

U. S. DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

HENRY MORRISON

AGAINST

STEAMSHIP "H. F. DIMOCK" and the METROPOLITAN STEAMSHIP COMPANY.

SOUTHERN DISTRICT OF NEW YORK, ss.:

EDWARD G. BENEDICT, being duly sworn, says that he is one of the proctors for the Metropolitan Steamship Company, which is the owner of the steamship "H. F. Dimock."

That on or about the 24th day of July, 1892, somewhere off Nantucket shoals, the said steamship "H. F. Dimock" collided with the yacht "Alva," by reason of which collision the said "Alva" was sunk, and became practically a total loss.

That thereafter and in the month of August, 1892, a petition was filed by the Metropolitan Steamship Company in the District Court of the United States for the District of Massachusetts, under the laws of which commonwealth the said Metropolitan Steamship Company was duly organized, and in which district the said "H. F. Dimock" was lying at the time, which petition set forth the facts of the said collision, and that it had occurred without the privity or knowledge of the petitioner, and that on information and belief the value of the "Alva" was largely in excess of the value of the "H. F. Dimock" and her freight then pending, and that the said Metropolitan Steam-

ship Company was in fear that suits would be brought against it or against the "H. F. Dimock" for damages in excess of the value of the said "H. F. Dimock." And thereupon the petitioner claimed the benefits of the statutes of the United States limiting the liability of ship owners and prayed that due appraisement might be had of the said "H. F. Dimock," and that a monition might issue against all persons claiming damages occasioned by said collision, and that the Court would make an order restraining all persons from prosecuting all suits or libels against the petitioner or against the said "H. F. Dimock," except before a Commissioner to be appointed by the Court in said proceeding, and also prayed that it might contest any claim of any liability in itself for damages incurred by any one by reason of said collision.

That thereafter the said vessel was appraised by appraisers duly appointed by the Court, and proper stipulations were given by the petitioner for such appraised value, and such proceedings were thereafter had that on the 17th day of August, 1892, the said Court issued a monition commanding the United States marshal of that district to give notice to any and all persons claiming damages by reason of said collision, to appear in said proceedings and make due proof of their respective claims on or before a day fixed in said monition, and also ordered the said marshal to make due publication of said notice in the newspaper known as the "Boston Advertiser," and to post a copy of said notice in the Court House in the City of Boston. And the said Court also made an injunction order restraining all persons claiming damages for any loss, damage or injury arising out of the said collision from prosecuting any suit against the petitioner as owner of the "H. F. Dimock" or against the said steamship in respect of any claim or claims arising out of the said collision except in those said proceedings.

A duly certified copy of said injunction order is hereto attached.

And deponent further says that a copy of the said restraining order was, on the 20th day of August, 1892, duly mailed to the libellant's proctors herein, as appears from a copy of the United States Marshal's certificate at the foot of the said order, and on information and belief deponent avers that the contents of the said restraining order were at all times known to the libellant herein.

And deponent further says that notwithstanding such proceeding and such restraining order a libel has been filed in this district on the 30th day of September, 1892, by Henry Morrison against the Metropolitan Steamship Company and the steamship "H. F. Dimock" and William K. Vanderbilt, claiming to recover for loss, damage or injury done, occasioned or incurred by reason of said collision between said "H. F. Dimock" and the said "Alva," and the said "Dimock" has been been attached in said proceeding, and is now in custody of the Marshal of this district.

Deponent also avers that the Metropolitan Steamship Company is a corporation duly organized under the laws of the State of Massachusetts and engaged in the business of running a regular line of freight boats between this port and the Port of Boston. That on the 28th day of September the steamboat "H. M. Whitney," another boat belonging to the Metropolitan Steamship Company, was sunk in collision in the Harbor of Boston, leaving the said steamship company without its usual quota of boats, and that it is essential to the business of the said company that the "H. F. Dimock" be released at once from the attachment in this district, and allowed to pursue its regular voyages. That the regular sailing time of the said Dimock will be at five o'clock in the afternoon of October 1st, 1892.

No previous application has been made for the order asked herewith.

E. G. BENEDICT.

Sworn to before me this 30th day of September, 1892.

ADDISON BROWN,
U. S. D. J.

DISTRICT COURT OF THE UNITED STATES.

DISTRICT OF MASSACHUSETTS.

IN THE MATTER OF The Libel or Petition of the METROPOLITAN STEAMSHIP COMPANY, owner of the steamship "H. F. Dimock," for limitation of liability against William K. Vanderbilt.	*In Admiralty.*

Order.

August 17, 1892.

Whereas, in the above-entitled cause it appears to the Court that due appraisement has been had of the amount or value of the interest of the libellant, as owner of said steamship "H. F. Dimock," in such steamship and her freight pending for the voyage, and that due stipulation has been given with sureties for the payment thereof into court whenever the same shall be ordered, and that monition has been issued against all persons claiming damages for any loss, damage or injury arising out of the matters and acts alleged in the libel;

And, whereas, the libel filed by the said Metropolitan Steamship Company, for limitation of liability seeks to limit its liability for all losses by reason of damage caused by collision as set forth in said libel, and has applied to the Court for an order restraining all persons from prosecuting suits and libels against said libellant or petitioner and against said steamship "H. F. Dimock" arising out of the losses occasioned by collision as set forth in said libel:

It is thereupon ordered and decreed that the said William K. Vanderbilt and all persons claiming damages for any loss, damage or injury arising out of the matters and acts alleged in said libel, be, and they are, hereby enjoined from prosecution of all and any suit or suits against the libellant or petitioner as owner of said steamship "H. F. Dimock" or against said steamship, in respect of any claim or claims arising out of the collision aforesaid, except in these proceedings.

Attest:

FRANK H. MASON,
Clerk.

[SEAL.]

UNITED STATES OF AMERICA,
Massachusetts District, } ss.:

BOSTON, August 20, 1892.

I hereby certify that I have this day mailed an attested copy of the within restraining order to Root & Clarke, attorneys for the within-named W. K. Vanderbilt at New York.

[SEAL.]

F. X. MACDONALD,
Deputy U. S. Marshal.

Fees:

Service, $2.00
Copy, 1.00
——$3.00

(A true copy.)

Attest:

BENJ. H. BRADLEE,
Deputy Clerk.

[ENDORSED:]

U. S. District Court, S. D. of N. Y. Henry Morrison against steamship "H. F. Dimock" and the Metropolitan Steamship Company. Affidavit and order to show cause. Benedict & Benedict, proctors for Met. SS. Co., 68 Wall street, New York. Due service of a copy of the within affidavit is hereby admitted. October 1, 1892, 12 M. G. E. P. Howard, proctor of libellant. Filed October 7, 1892.

5.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

HENRY MORRISON

vs.

STEAMSHIP "H. F. DIMOCK," ET AL.

SIR—Please take notice that we shall read the annexed affidavits and papers on the motion in the above cause.

Dated October 3d, 1892.

Yours, &c.,

BENEDICT & BENEDICT,

Proctors for Steamer

and Steamship Company.

To G. E. P. HOWARD, ESQ.,

Libellant's Proctor,

Mills Building.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

HENRY MORRISON

vs.

Steamship "H. F. DIMOCK" ET AL.

SOUTHERN DISTRICT OF NEW YORK, ss.:

HENRY F. DIMOCK, being duly sworn, says that he is treasurer and agent of The Metropolitan Steamship Company, owner of the steamship "H. F. Dimock." That he has read the libel of Henry Morrison in this case.

That this proceeding of said Henry Morrison is, as deponent believes, brought by him as the agent of William K. Vanderbilt, the owner of the "Alva," and under his instructions and under the instructions and advice of the attorneys and counsel of the said Vanderbilt, Messrs. Root & Clarke, and is brought for the interest of said Vanderbilt and by collusion with him; that the existence and pendency of the proceeding in limitation of liability began by the owner of the "H. F. Dimock" in the United States District Court of Massachusetts was known to the said Vanderbilt and to the said Root & Clarke before the filing of said Morrison's libel; that on the 20th day of August, 1892, a copy of the restraining order in such limitation of liability proceeding was mailed by the Marshal of the District of Massachusetts to said Root & Clarke; that there-

after deponent in an interview with said Clarke at his office several weeks ago showed to said Clarke a copy of said restraining order and of the monition and offered them to him, and said Clarke informed deponent that he had a copy of the restraining order, and deponent left with said Clarke a copy of the said monition issued in said proceeding in Massachusetts.

And deponent further says that on the 16th day of September, 1892, a copy of the said restraining order of the United States District Court in said proceeding in Massachusetts was personally served upon said W. K. Vanderbilt at Newport, Rhode Island, by one Daniel R. Caswell, who left the same with said Vanderbilt, as appears by affidavit of said Caswell hereto attached.

And deponent further says that, as deponent is informed and believes, the filing of the libel in this case by said Morrison was procured to be done by said Vanderbilt, or his said attorneys, Root & Clarke, in the intention of avoiding the effect of said restraining order, if possible, by having this suit instituted in some other person's name than that of said Vanderbilt, though really for his interest, and that deponent believes that the existence of said limitation proceedings in the District Court of Massachusetts, and of the restraining order therein, was known to the libellant and to his proctor before the libel herein was filed, or, if it was not actually known to them, it was because it was purposely kept from their knowledge at the time when said Morrison was (as deponent believes the fact to have been) instructed to confer with said Howard, his present proctor, in reference to this matter; and that said Howard was formerly an assistant in the office of United States District Attorney when Mr. Root, of said firm of Root & Clarke, was United States District Attorney.

And deponent further says that hereto attached is a copy of the record of the proceeding in limitation of

liability in the District Court of Massachusetts hereinbefore referred to.

HENRY F. DIMOCK.

Sworn to before me this 3d day of October, 1892.

WM. D. JONES,
Notary Public
For Kings Co.
Cert. filed in N. Y. Co.

[SEAL.]

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

HENRY MORRISON

vs.

Steamship "H. F. DIMOCK" ET AL.

SOUTHERN DISTRICT OF NEW YORK, ss:

EDWARD G. BENEDICT, being duly sworn, says that the affidavit accompanying the order to show cause why the libel herein should not be dismissed was made by deponent owing to the absence from the city at the time of all officers of the Metropolitan Steamship Company.

That the said affidavit, on the third page thereof, states that a copy of the injunction order made by the District Court for the District Court of Massachusetts had been mailed to the libellant's proctors.

That the reason such statement was made in said

affidavit is as follows: It was understood by deponent that the chief claimant against the Metropolitan Steamship Company in any litigation against it, arising out of the collision with the yacht "Alva," would be William K. Vanderbilt, the owner of the said "Alva." It was also well known to him that Messrs. Root & Clarke were the attorneys for the said Vanderbilt. That information as to the attachment of the steamship "H. F. Dimock" did not reach deponent until late in the afternoon of Friday, September 30th, and on attempting to telephone to the office of the Clerk of this Court to ascertain the name of libellant's proctor, deponent found that the Clerk's Office was closed. Deponent thereupon telephoned to the Metropolitan Steamship Company to ask them to see the deputy marshal aboard the "H. F. Dimock" and ascertain the name of libellant's proctors, which was done, and word was returned to deponent that the marshal had replied that the proctors were the same as the proctors in the case of the yacht "Conqueror," who, as deponent well knew, were Messrs. Root and Clarke.

That, obtaining the order to show cause, deponent stated to the Court that Messrs. Root & Clarke were libellant's proctors, and was directed by the Court to serve the affidavit and order on either Mr. Root or Mr. Clarke personally. That deponent was unable to find Mr. Root, and on attempting to serve the papers on Mr. Clarke at his house, No. 1 West Eighty-first street, was told by Mr. Clarke, before he had read the said papers, that his firm were not the proctors for the libellant, but that the libellant's proctor was G. E. P. Howard, Esq.

E. G. BENEDICT.

Sworn to before me this 3d day of October, 1892.

WM. B. JONES,
[SEAL.] Notary Public for Kings Co.
Certificate filed N. Y. Co.

Copy of Record in Massachusetts Court Referred to in H. F. Dimock's Affidavit.

382.

THE METROPOLITAN STEAMSHIP COMPANY, PETITIONER, TO LIMIT LIABILITY OF STEAMSHIP "H. F. DIMOCK."

(Damage.)

JOHN LOWELL.
JOHN LOWELL, JR.
WM. D. SOHIER.

June T., 1892.

Aug. 16. Libel filed and warrant to Appraise issued.

Aug. 17. Warrant to Appraise returned. Steamship, $80,000—pending freight, $2,395.33.

Aug. 17. NELSON, J. Order for stipulation for $82,395.33.

Aug. 17. Stipulation to the action given.

Aug. 17. Monition issued, returnable November 25th.

Aug. 17. NELSON, J. Restraining order issued.

Aug. 27. NELSON, J. Amendment to libel filed and allowed.

United States District Court. District of Massachusetts. A true copy of the docket entries in the above-entitled cause. In testimony whereof, I have hereunto set my hand and affixed the seal of said Court this 30th day of August, A. D. 1892.

[SEAL.]

(Sd.) FRANK H. MASON,
Clerk.

DISTRICT COURT OF THE UNITED STATES,

DISTRICT OF MASSACHUSETTS.

No. 382. IN ADMIRALTY.

THE METROPOLITAN STEAMSHIP COMPANY (Steamship "H. F. Dimock")

vs.

WILLIAM K. VANDERBILT.

} Libel and Petition.

TO THE HONORABLE THE JUDGE OF THE DISTRICT COURT OF THE UNITED STATES WITHIN AND FOR THE DISTRICT OF MASSACHUSETTS:

The libel and petition of the Metropolitan Steamship Company, a corporation duly organized under the laws of the Commonwealth of Massachusetts, and having its principal place of business in Boston, in said Commonwealth, owner of the steamship "H. F. Dimock," vs. William K. Vanderbilt, of the City, County and State of New York, owner of the steamship "Alva," in a cause of limitation of liability, civil and maritime, alleges and articulately propounds as follows:

1st. That in the month of July, 1892, the said corporation, your petitioner, was and ever since has been the owner of the steamship "H. F. Dimock," of about twenty-six hundred and twenty-six tons, gross measure, and the said corporation was engaged in the business of running a line of freight steamships between the said City of New York and the Port of Boston, in this district, and that on the twenty-fourth day of said July said steamship was employed

in said business on the high seas and within the ebb and flow of the tide, and within the admiralty and maritime jurisdiction of this Honorable Court.

2d. That on the twenty-fourth day of July, A. D., 1892, at about eight o'clock in the forenoon, the said steamship "Dimock" was on Nantucket Shoals in Vineyard Sound on her way from Shovelful Light Ship to Pollock Rip Light Ship on her passage from New York to Boston. That said steamship was going at half speed in a thick fog, and was proceeding very cautiously, stopping the engines occasionally to listen for the bells of the Light Ship and for other vessels. She had double lookouts on the bow, and extra lookout, was whistling at short intervals from twenty to forty seconds apart, and was taking extraordinary precautions to prevent accidents and to keep in the channel.

At half-past eight in the forenoon the engines were stopped to listen for the bell and for the whistle of Pollock Rip Light Lhip, and for other vessels. When the bell and whistle of said Light Ship were heard, the "Dimock" took her departure for the Pollock Rip Slue bell buoy.

The "Dimock" took her time at said Light Ship and started up her engines at 8:31 o'clock under one bell or half speed, and kept about the middle of the Pollock Rip Slue channel.

The captain was all this time in the pilot house, and suddenly, at about 8:38, the captain saw the shadow of a vessel's mast and smoke stacks dead ahead, and he immediately stopped and reversed the engines, full speed, and had the helm put hard a-port. The engines were immediately stopped and reversed at full speed, and the "Dimock's" headway was diminished and her course was changed.

Notwithstanding all these precautions, a collision was unavoidable, and at about 8:40 o'clock the bow of the

"Dimock" struck the steamship which had been previously sighted, the "Alva," a few feet ahead of the foremast, and cut her down below the water line, so that she sank in about twenty-five minutes.

The "Dimock" got her boats ready and lowered her ladders, and took all of the passengers, officers and crew of the "Alva" aboard.

3d. That at the time of the collision the "Alva" was lying anchored across the slue channel, so-called, and directly in the course of the "Dimock" and all other vessels which were on their way from Pollock Rip to the bell buoy. This is the regular inside slue channel usually taken by all coastwise steamers.

The channel at the point where the "Alva" was anchored is very narrow, and the "Alva" is about two hundred and ninety feet long, and lying, as she was, crosswise about in the middle of the channel, she practically obstructed it, and was directly in the course of the "Dimock," and of all steamers passing through.

This is a much-frequented channel, and is a very dangerous place for any vessel to anchor, as she is directly in the way of all vessels passing through, and no prudent man would anchor a steamship there, as there is plenty of good safe anchorage near, and easily accessible out of the track of other vessels, which any competent pilot would avail himself of, if he desired to anchor.

Being anchored in such an improper and dangerous position, the "Alva" did not take sufficient and suitable precaution to make her position known until too late, and until a collision was unavoidable.

Your petitioner is informed and believes that at the time of the collision there was no proper competent Vineyard Sound licensed pilot in charge of the "Alva" and there was no person in charge of the said "Alva," who was sufficiently familiar with that locality to either

prudently navigate or anchor said steamship under such circumstances as then existed.

4th. That independently of the limitation of liability hereinafter claimed, your petitioner denies and contests its liability, and the liability of the said " Dimock " for any loss, damage or injury suffered by the " Alva," or her owner, or any of the persons on board of her, or elsewhere, and it denies that the accident was occasioned by any want of care of the " Dimock," or those in charge of her, but it distinctly asserts and claims that she was at the time being navigated with the utmost prudence, and that every precaution was being used to avoid other vessels, and extraordinary care was being taken. Your petitioner further claims that the collision and the damage occasioned thereby was caused by the gross carelessness and incompetence of the person and persons in charge of the " Alva " at the time and by their gross carelessness in anchoring as aforesaid, and by their disregard of the ordinary, proper and legal precautions.

5th. That if said collision and the damages occasioned thereby were caused by any act of neglect of the " Dimock," or those in charge of her, which your petitioner denies and claims the right of contesting in this proceeding, the same was occasioned or incurred without the privity or knowledge of your petitioner, or any of its officers.

6th. That your petitioner is ignorant of the value of the " Alva," and of the amount of damage caused by said collision, but it is informed and believes that the " Alva " alone is claimed to be worth two hundred and fifty thousand dollars, which is greatly in excess of the value of the steamship " Dimock " and her freight then pending.

Your petitioner alleges that the value of the "Dimock" at said time, together with her freight then pending, was less than one hundred and fifty thousand dollars.

7th. That your petitioner fears that suits or libels may be brought against it or against the "Dimock," and damages claimed largely in excess of the value of said vessel, and her freight then pending.

That not admitting, but denying any liability of itself, or of said steamship for any act, matter or thing, loss, damage or injury done, occasioned or incurred, your petitioner claims the benefit of the limitation of liability provided for in Sections 4283 and 4284, Chapter 6, Title 48, of the Revised Statutes of the United States, and it hereby claims that, if this Honorable Court shall decide that any damage was done or occasioned by the negligence of the "Dimock," or those in charge of her, and for which said vessel is liable, that the liability of your petitioner as owner of said steamship shall be limited to the value of said steamship, and her freight pending at said time.

Wherefore your petitioner prays:

1. That this Honorable Court will cause due appraisement to be had of the value of the steamship "H. F. Dimock," on or about the twenty-fourth day of July, A. D. 1892, and of her freight then pending, and will make an order for a giving of a stipulation, with securities for the payment thereof into Court whenever the same shall be ordered.

2. That the Court will issue a monition against all persons claiming damages for loss, destruction, damage and injury occasioned by the aforesaid collision, citing them to appear before this Court and make due proof of their respective claims before a certain day to be named in said monition.

3. That the Court will also designate a Commissioner before whom such claims shall be presented in pursuance of said monition, and to make report thereof to the Court; and that the petitioner may be at liberty to contest its liability and the liability of the said "Dimock" for all such loss, damage or injury independently of the limitation of liability herein claimed.

4. That the Court will make an order restraining all persons from prosecuting suits and libels against your petitioner, and against said steamship, except before said Commissioner, and in this proceeding; and that upon the coming in of the report of said Commissioner and confirmation thereof, it shall appear that your petitioner is not liable, and said steamship is not liable for such loss, damage, destruction or injury, that it may be so finally decreed by this Court.

5. That if the Court shall find and decree that any person or persons are entitled to maintain claims against your petitioner or against the said steamship for, or on account of, any act, matter or thing, loss, damage or injury done, occasioned or incurred, then that the Court will order and decree that the liability of your petitioner shall in no event exceed the value of said steamship and her freight pending at said time, and that your petitioner and said steamship shall be forever exempt from all further liabilities in the premises; and that the moneys secured to be paid into court as aforesaid, after the payment of costs and expenses, shall and may be divided *pro rata* amongst the several claimants in proportion to the amount of their respective claims; and that, in the meantime, and until the final judgment of the Court shall be rendered herein, this Court will make an order restraining the further prosecution of all and any suits or suit against your petitioner in re-

spect of any such claim or claims, or against said steamship "Dimock."

6. That this Honorable Court will order, do and decree all other matters and things needful and customary for the determination of the rights of the parties, and for the limitation of the liability of your petitioner, as aforesaid, and that the petitioner may have all such other and further orders, decrees and reliefs as justice may require.

METROPOLITAN STEAMSHIP COMPANY,
By H. M. WHITNEY,
President.

JOHN LOWELL,
JOHN LOWELL, Jr.,
WM. D. SOHIER,
Proctors for Libellant, Petitioner.

COMMONWEALTH OF MASSACHUSETTS, } ss.:
Suffolk, }

Then personally appeared Henry M. Whitney, president of the Metropolitan Steamship Company, and makes oath that the allegations of the foregoing libel and petition, by him subscribed on behalf of said corporation, are true, according to the best of his knowledge, information and belief.

Witness my hand and notarial seal this day of August, A. D. 1892.

JOHN BRADFORD,
[SEAL.] Notary Public.

A true copy of the libel or petition in said cause, with all the endorsements thereon.

FRANK S. MASON,
[SEAL.] Clerk.

Warrant to Appraise and Return.

[SEAL.]

UNITED STATES OF AMERICA, }
Massachusetts District, } ss.:

THE PRESIDENT OF THE UNITED STATES OF AMERICA, TO THE MARSHAL OF MASSACHUSETTS DISTRICT, OR HIS DEPUTY, GREETING:

Whereas a libel or petition has been filed before the Honorable the Judge of the District Court for the District aforesaid by the Metropolitan Steamship Company, a corporation duly organized under the laws of the Commonwealth of Massachusetts, and having its principal place of business in Boston in said Commonwealth, owner of the steamship "H. F. Dimock," against William K. Vanderbilt, of the City, County and State of New York, owner of the steamship "Alva," and all other persons now, or hereafter claiming damages against said petitioner, as owner of the said steamship "H. F. Dimock," or against said steamship, by reason of any of the losses or matters in said libel or petition set forth, claiming the benefit of limitation of liability, as owner of said steamship "H. F. Dimock," according to the provisions of the Statutes of the United States.

And whereas said libellant or petitioner, owner of said steamship "H. F. Dimock," has prayed that said steamship "H. F. Dimock," and appurtenances, and pending freight, might be appraised, and the value thereof, at the time of the damage, as set forth in said libel, and has also prayed that it might be allowed to stipulate for the payment into court of such appraised value, as the law directs in such cases. You are therefore directed to cause said steamship and pending freight to be appraised on oath by R. G. F. Candage,

Andrew G. Whidden and Robert B. Gardner, said appraisement to be made as soon as may be, and the appraisers to be duly sworn.

Witness, the Honorable THOMAS L. NELSON, at Boston, this sixteenth day of August, A. D. 1892.

FRANK H. MASON,
Clerk.

UNITED STATES OF AMERICA, } ss.
Massachusetts District. }

BOSTON, Aug. , 1892.

Personally appeared the within-named R. G. F. Candage, Robert B. Gardner and Andrew G. Whidden, and severally made oath that they will appraise the within-named steamship, et al. and pending freight according to their best skill and judgment.

Before

[SEAL] FRANK H. MASON,
Clerk U. S. Dist. Court,
District of Massachusetts.

[SEAL.]

UNITED STATES OF AMERICA, } ss. :
Massachusetts District, }

Pursuant to the annexed warrant, I have notified the appraisers therein named of their appointment, and have requested of them to attend to the duties assigned them, and they have attended and make report as under :

F. X. MACDONALD, Deputy Marshal.

BOSTON, August 17, 1892.

We, the subscribers, having been notified by the Marshal of the District of Massachusetts that we were

appointed by the Honorable THOMAS L. NELSON, Judge of the District Court for the District of Massachusetts, to estimate and appraise the steamship "H. F. Dimock," mentioned in the annexed warrant, have attended to the duties assigned us, and, after a strict examination and careful inquiry, we do estimate and appraise the said steamship as under: at eighty thousand ($80,000) dollars, and the freight pending at the time of the within-named collision at twenty-three hundred ninety-five and $\frac{33}{100}$ ($2,395.33) dollars.

Steamship	$80,000 00
Freight	2,395 33
	$82,395 33

FEES.

Service of Notice	$6 00
Off. Attendance	5 00
Travel	48
Qual. and Clerk	3 00
Pd. 3 Appraisers	45 00
Expense	4 12
Total	$63 60

In witness whereof we hereunto set our hands, at Boston, this seventeenth day of August, 1892.

R. G. F. CANDAGE.
R. B. GARDNER.
ANDREW G. WHIDDEN.

A true copy of the Warrant to Appraise in case of the Metropolitan Steamship Company, Petitioner, to Limit Liability as owner of S. S. "H. F. Dimock," and all the endorsements thereon.

[SEAL.] FRANK H. MASON,
Clerk.

Order for Stipulation.

DISTRICT COURT OF THE UNITED STATES,

DISTRICT OF MASSACHUSETTS.

In Admiralty.

No. 382.

The Metropolitan Steamship Company, petitioner, to limit liability of steamship "H. F. Dimock."

Order of Court.

Whereas, in the above-entitled cause it appears to the Court that due appraisement has been had of the amount or value of the interest of the libellant or petitioner in the steamship "H. F. Dimick" and pending freight at the time alleged in said petition, and the value of its interest in said steamship and pending freight, is found to be as follows, viz.:

Value of steamship, eighty thousand dollars; pending freight, two thousand three hundred ninety-five and $\frac{33}{100}$ dollars.

Now, therefore, it is ordered and decreed, that the libellant or petitioner give proper stipulation, with sureties, for the payment of said sums into Court, whenever the same shall be ordered by the Court.

FRANK H. MASON,
Clerk.

A true copy of the order for stipulation in case of the Metropolitan Steamship Company, petitioner, to limit liability of S. S. "H. F. Dimock," and all endorsements thereon.

[SEAL.]

FRANK H. MASON,
Clerk.

Instance. Stipulation to the Action.

At a District Court of the United States of America, holden at Boston, within and for the District of Massachusetts, on the seventeenth day of August, in the year of our Lord one thousand eight hundred and ninety-two.

In cause the Metropolitan Steamship Company, petitioner to limit liability, as owner of steamship "H. F. Dimock."

Then appeared the Metropolitan Steamship Company (a corporation duly organized under the laws of the Commonwealth of Massachusetts, and having its usual place of business in Boston, in said Commonwealth) by its president, Henry M. Whitney, and produced for sureties Henry M. Whitney, of Brookline, in said district, and Henry F. Dimock, of New York, in the District of New York. And the said the Metropolitan Steamship Company, Whitney and Dimock submitting themselves to the jurisdiction of this Court, bound themselves, their heirs, executors and administrators jointly and severally, in the sum of eighty-two thousand, three hundred ninety-five $\frac{33}{100}$ dollars unto William K. Vanderbilt, of the City, County and State of New York, owner of the steamship "Alva," and all other parties claiming damages in these proceedings, that the said libellant or petitioner shall abide by all orders and decrees, interlocutory or final, of the Court, and shall pay the amount of the final decree of the Court, and all sums of money that it shall be ordered to pay by the final decree of the Court, whether it be in this or any appellate court, and unless it shall do so, they do hereby consent that forthwith execution shall issue forth against them, their heirs, executors and administrators, jointly and severally, and against their lands, goods and chattels, wheresoever the same shall

be found to the value of the sum above mentioned, without further notice or delay.

THE METROPOLITAN S. S. CO.
By HENRY M. WHITNEY,
President.

HENRY M. WHITNEY.
HENRY F. DIMOCK.

Attest:
FRANK H. MASON,
Clerk.

(A true copy.)

Attest:
FRANK H. MASON,
Clerk.

Injunction Decree.

DISTRICT COURT OF THE UNITED STATES.

DISTRICT OF MASSACHUSETTS.

In Admiralty.

IN THE MATTER

OF

The Libel or Petition of the METROPOLITAN STEAMSHIP COMPANY, owner of the Steamship "H. F. Dimock," for Limitation of Liability against WILLIAM K. VANDERBILT.

Order, August 17, 1892.

Whereas in the above-entitled cause it appears to the Court that due appraisement has been had of the amount or value of the interest of the libellant as owner of said steamship "H. F. Dimock," in such steamship and her freight pending for the voyage, and that due stipulation has been given with sureties for the payment thereof into Court, whenever the same shall be ordered, and that monition has been issued against all persons claiming damages for any loss, damage or injury arising out of the matters and acts alleged in the libel, and whereas the libel filed by said Metropolitan Steamship Company for limitation of liability seeks to limit its liability for all losses by reason of damage caused by collision as set forth in said libel, and has applied to the Court for an order restraining all persons from prosecuting suits and libels against said

libellant or petitioner, and against said steamship "H. F. Dimock," arising out of the losses occasioned by collision as set forth in said libel.

It is thereupon ordered and decreed that the said William K. Vanderbilt, and all persons claiming damages for any loss, damage or injury arising out of the matters and acts alleged in said libel be, and they are, hereby enjoined from prosecution of all and every suit or suits against the libellant or petitioner as owner of said steamship "H. F. Dimock," or against said steamship in respect of any claim or claims arising out of the collision aforesaid execpt in those proceedings.

Attest:

[SEAL.] FRANK H. MASON,
Clerk.

UNITED STATES OF AMERICA, }
Massachusetts District, } ss.:

BOSTON, August 20, 1892.

I hereby certify that I have this day mailed an attested copy of the within restraining order to Root & Clark, attorneys for the within named W. K. Vanderbilt, at New York.

F. X. MACDONALD,
Deputy U. S. Marshal.

Fees:
Service, $2 } $3
Copy, $1 }

(A true copy.)

Attest:

[SEAL.] BENJ. H. BRADLEE,
Deputy Clerk.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, Newport, } S.C.:

NEWPORT, September 14, A. D. 1892.

I hereby appoint Daniel R. Caswell of said Newport a special Deputy Sheriff to serve the within writ.

JAMES ANTHONY, [SEAL.]
Sheriff.

NEWPORT, R. I., September 14, 1892.

Personally appeared before me the above-named Daniel R. Caswell, and made oath to truly and faithfully perform his duty as special Deputy Sheriff to serve the within writ.

WM. LOVIE TILLEY,
Notary Public.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, Newport, } S.C.:

In Newport, in said county, on this sixteenth day of September, A. D. 1892, I have this day made service of the within writ, by leaving the original writ, of which the within is a true copy, with the within-named William K. Vanderbilt personally in hand.

DANIEL R. CASWELL,
Special Deputy Sheriff.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, Newport, } S.C.:

Newport, said county, on this seventeenth day of September, A. D. 1892, personally appeared before me the above-named Daniel R. Caswell, and made oath that he well and truly made the above-stated personal service as stated on his return.

Before me:

[SEAL.] WM. LOVIE TILLEY,
Notary Public.

Monition.

MASSACHUSETTS DISTRICT, ss.:

[SEAL.]

THE PRESIDENT OF THE UNITED STATES OF AMERICA, TO THE MARSHALL OF OUR SAID DISTRICT, OR EITHER OF HIS DEPUTIES, GREETING:

We command you that you give notice to William K. Vanderbilt, of the City, County and State of New York (owner of the steamship "Alva"), and to all persons concerned, that a libel or petition is filed before the Honorable THOMAS L. NELSON, Judge of the District Court for said District, by The Metropolitan Steamship Company, as owner of the steamship "H. F. Dimock," at the time of the loss and damage hereinafter stated, and of her freight, then pending against said William K. Vanderbilt, and against any and all other persons now or hereafter making or alleging any claim against the said steamship, or the libellant as owner thereof, by reason of the loss or damage, acts and matters hereinafter referred to in a cause of damage and limitation of liability, civil and maritime, wherein and whereby the said owner of said steamship claims the benefit of limitation of liability, as by law provided and set forth in said libel and petition; the damages alleged in the premises having occurred, as it is alleged, by reason of a collision between the said steamship "H. F. Dimock" and the steamship "Alva" in Vineyard Sound on the morning of July 24, 1892, whereby the steamship "Alva" was sunk.

And that you cite the said William K. Vanderbilt, and any and all persons claiming damages for any loss of property or personal injuries occasioned or incurred by reason of or caused by or arising out of the said collision, to appear before this Honorable Court, at the

United States Court House, in Boston, in said District of Massachusetts, on or before Friday, the 25th day of November next, at 10 o'clock in the forenoon, and make due proof of their respective claims in the premises, and that you give notice by serving an attested copy hereof on said William K. Vanderbilt, if he may be found within said district, and that you give further notice by advertising the same in the "Boston Daily Advertiser," a newspaper published at said Boston, at least sixty days before the return day named herein, and that you also post a copy of the same notice at the said court-house in said Boston.

Witness the Honorable THOMAS L. NELSON, Esquire, at said Boston, this seventeenth day of August, A. D. 1892.

FRANK H. MASON,
Clerk.

(A true copy.)
Attest:

[SEAL.] BENJ. H. BRADLEE,
Deputy Clerk.

Amendment of Petition.

UNITED STATES DISTRICT COURT,

In Admiralty,

DISTRICT OF MASSACHUSETTS.

THE METROPOLITAN STEAMSHIP COMPANY (Steamship "H. F. Dimock")

vs.

WILLIAM K. VANDERBILT.

TO THE HONORABLE THE JUDGE OF THE DISTRICT COURT WITHIN AND FOR THE DISTRICT OF MASSACHUSETTS:

Your petitioner in the above-entitled cause respectfully moves to amend its petition and libel by adding at the end of the sixth clause thereof the following words:

"Your petitioner alleges that at the time the libel and petition was filed in this cause, the said steamship 'H. F. Dimock' was, and has ever since been, lying in the Port of Boston and within the admiralty jurisdiction and process of this Honorable Court."

METROPOLITAN STEAMSHIP COMPANY,
By HENRY M. WHITNEY,
President.

JOHN LOWELL,
JOHN LOWELL, JR.,
WM. D. SOHIER,
Proctors for Petitioner.

COMMONWEALTH OF MASSACHUSETTS, } ss.:
Suffolk, }

Then personally appeared HENRY M. WHITNEY, president of the Metropolitan Steamship Company, and makes oath that the allegations in the foregoing amendment are true.

Witness my hand and seal this 25th day of
[SEAL.] August, A. D. 1892.

OSCAR G. BERRY,
Notary Public.

A true copy of the amendment to libel in cause of the Metropolitan S. S. Co. and others to limit liability of S. S. "H. F. Dimock," and all the endorsements thereon.

[SEAL.] FRANK H. MASON,
Clerk.

U. S. DISTRICT COURT,

S. D. OF NEW YORK.

HENRY MORRISON

vs.

S. S. "H. F. DIMOCK," etc.

SOUTHERN DISTRICT OF NEW YORK, ss.:

HENRY F. DIMOCK, being duly sworn, says that he has read the affidavit of Wm. K. Vanderbilt verified on the 3d day of October. That the statement of the

said Vanderbilt on the second page of said affidavit is untrue. That said proceedings were taken in the ordinary way, in open court, and that there was not the slightest intention on the part of the Metropolitan Steamship Company, or deponent, to keep said proceedings secret, or to keep the knowledge of them from said Vanderbilt, or any other person.

HENRY F. DIMOCK.

Sworn to and subscribed before me this 4th day of October, 1892.

PETER S. CARTER,
Notary Public, Kings Co.,
Cert. Filed in N. Y. Co.

[ENDORSED :]

U. S. Dist. Court, S. D. Henry Morrison vs. Steamer "H. F. Dimock," &c., Co. Affts., Papers and Notice. Benedict & Benedict, Pro's. for S. S., &c., 68 Wall Street, New York, N. Y. To G. E. P. Howard, Esq., Mills Building. Filed Oct. 7, 1892.

6.

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

HENRY MORRISON

AGAINST

Steamship "H. F. DIMOCK" ET AL.

SOUTHERN DISTRICT OF NEW YORK, } ss.:
City and County of New York, }

SAMUEL B. CLARKE, being duly sworn, says:

I am one of the proctors for respondent Vanderbilt in this suit, and of counsel for the libellant Morrison.

The respondent Vanderbilt's appearance in this cause by Root & Clarke, his proctors, was entered on the first day of October, inst.

I am informed and believe that, under process issued on the libel herein, the Marshal of this district arrested the steamship "H. F. Dimock" within this district on the day of filing the libel, and on the first day of October, inst., he personally served said process within this district upon the respondent the Metropolitan Steamship Company, by exhibiting the original process and delivering a copy thereof to Henry F. Dimock, the treasurer of the said steamship company, and its agent in New York City; information obtained by inquiry at the office of the Marshal.

I am informed and believe that neither said Morrison nor said Vanderbilt, nor any other claimant for damages arising out of the sinking of the yacht "Alva"

by the steamship "H. F. Dimock," have commenced any suit or proceeding *in rem* or *in personam* in any other district or court than this.

Herewith submitted are certified copies of the following proceedings in the District Court of the United States for the District of Massachusetts in the cause referred to in the affidavit of Mr. Benedict, verified September 30th, viz.: (1) Petition Metropolitan Steamship Company, filed August 16, 1892; (2) warrant to appraise and appraisement, the latter dated August 17th; (3) order for stipulation, not dated; (4) stipulation, dated August 17th; (5) restraining order, dated August 17th; (6) monition, tested August 17th; (7) amendment to libel filed August 27th; (8) copy of the docket entries in the cause.

I am informed by letter of the Clerk of the District Court for the District of Massachusetts to my firm, dated September 12, 1892, as follows: "In reply to yours of 9th will say that no proceedings have been taken in Case No. 382 since filing amendment to libel. I send you a copy of that and also a copy of all the docket entries up to date."

I am informed by libellant Morrison that various matters stated in the affidavit of W. K. Vanderbilt, herewith submitted, are true as to him as well as to said Vanderbilt, except that he, Morrison, has not received any copy of the monition or restraining order, and I state on information and belief that none has been mailed or sent to him.

SAMUEL B. CLARKE.

Subscribed and sworn to before me this 4th day of October, 1892.

HORATIO S. RUBENS,
Notary Public (170),
New York County.

[SEAL.]

DISTRICT COURT OF THE UNITED STATES.

SOUTHERN DISTRICT OF NEW YORK.

HENRY MORRISON

AGAINST

Steamship "H. F. DIMOCK," ET AL.

SOUTHERN DISTRICT OF NEW YORK, City and County of New York, } ss.:

HENRY MORRISON, being duly sworn, says: I am the libellant in this cause.

I have read the affidavit of William K. Vanderbilt herewith submitted. The statements therein contained as to the proceedings in Massachusetts are true as to me also, except that I have never received any copy of the monition or restraining order or any other notice of those proceedings direct or indirect from the petitioner in Massachusetts or its lawyers, or from the Massachusetts Court or from any of its officers or from the Marshal for Massachusetts, and I had no notice whatever of those proceedings until they had taken place.

Neither Mr. Vanderbilt nor myself, nor, to the best of my knowledge, information and belief, any other claimant for damages by the collision have instituted any suit or proceeding therefor, except this suit.

I have not appeared in the Massachusetts proceedings, and, to the best of my knowledge, information and belief, nobody else has appeared in those proceedings.

HENRY MORRISON.

Subscribed and sworn to before me this 4th day of October, 1892.

HORATIO S. RUBENS,
Notary Public (170),
New York County.

[SEAL.]

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

HENRY MORRISON

AGAINST

Steamship "H. F. DIMOCK," METROPOLITAN STEAMSHIP COMPANY, WILLIAM K. VANDERBILT and others.

SOUTHERN DISTICT OF NEW YORK, }
City and County of New York, } ss.:

WILLIAM K. VANDERBILT, being duly sworn, says: I am one of the respondents in this cause, and as I am informed by my proctors, Messrs. Root & Clarke, my appearance was entered herein on the first day of October last past.

With reference to the proceedings in the United States District Court for the District of Massachusetts mentioned in the affidavit of Edward G. Benedict, verified September 30, 1892, I state as follows:

I have not been within the State or District of Massachusetts at any time since the 31st day of July, 1892.

I have not been personally served with any process within said State or District by a Marshal of the United States or otherwise in said proceedings.

I had no notice of any kind whatever of the appraisement proceedings referred to in the affidavit of said Benedict, and no opportunity

to be heard thereupon, and no opportunity to witness the proceedings of the appraisers.

I had no notice of any kind whatever of the proceedings in said District Court for Massachusetts, which resulted in the order for the stipulation referred to in the affidavit of said Benedict, and no opportunity to be heard thereupon.

I had no notice of any kind whatever of the proceedings in said District Court for Massachusetts, which resulted in the injunction order referred to in the affidavit of said Benedict, and no opportunity to be heard thereupon.

As I am informed and believe, no notice of any kind of said appraisement proceedings or of said stipulation proceedings, or of said injunction proceedings, was published or mailed or given in any way whatever, or attempted to be given to me or to any other claimant for damages against the Metropolitan Steamship Company or the steamship "H. F. Dimock," arising out of the collision by which the yacht "Alva" was sunk; but said proceedings and all of them were wholly *ex parte* and willfully and intentionally kept secret.

The only notice of any kind which has been given to me of any of the proceedings in said District Court for Massachusetts consists, first, of a copy of a monition citing me to appear before said District Court for Massachusetts, and to make due proof of my claim arising out of said collision, on or before Friday, the 25th day of November next; and, second, of a copy of the injunction order dated August 17th, 1892, purporting to order and decree that I and all other claimants of damages for said collision be, and that I and they were hereby, enjoined from prosecution of any suit or suits against the Metropolitan Steamship Company or the steamship "H. F. Dimock," except in the said proceedings in said District Court for Massachusetts; which said copies of said monition and restraining order were not served upon or received by

me within the State or District of Massachusetts, but were received out of said State and District after the 17th day of August, 1892, and after all the said appraisement, stipulation and injunction order proceedings aforesaid had been completed.

No appearance has been entered by or formed in any of said proceedings pending in said District Court for Massachusetts.

And, as I am informed and believe, no other claimant of damages has appeared or been served with process.

As I am informed and believe, said steamship "H. F. Dimock" has never been surrendered to said District Court for Massachusetts nor attached by its process, nor has said District Court ever in any way acquired jurisdiction thereof.

I am advised, and believe, that, by reason of the matters aforesaid, the said proceedings in said District Court for Massachusetts, and particularly said appraisement, stipulation and injunction order proceedings, are as to me a nullity and in nowise binding upon me, and in nowise affecting either my general personal rights or my specific rights as to the said steamship "H. F. Dimock."

W. K. VANDERBILT.

Subscribed and sworn to before me this 3d day of October, 1892.

HORATIO S. RUBENS,
Notary Public (170),
New York County.

[SEAL.]

U. S. CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

HENRY MORRISON

vs.

S. S. "H. F. DIMOCK" ET AL.

SOUTHERN DISTRICT OF NEW YORK, ss. :

SAMUEL B. CLARKE, being duly sworn, says :

I first saw the copy of Henry F. Dimock's affidavit, veified yesterday, at 20 minutes to eleven o'clock this morning, too late to get any affidavit of the facts therein stated by libellant Morrison or respondent Vanderbilt. To the best of my knowledge, information and belief it is not true that this suit was brought by said Morrison as the agent or in collusion with said Vanderbilt it was brought in good faith to enforce Morrison's own right set out in the libel.

SAMUEL B. CLARKE.

Subscribed and sworn to before me this 4th October, 1892.

JOHN F. MOINEHAN,
Notary Public,
New York Co.

[ENDORSED :]

U. S. District Court. Henry Morrison vs. Steamship "H. F. Dimock" *et al.* Affidavits in opposition to motion to dismiss libel, &c., October 4, 1892. G. E. P. Howard, Libellant's Proctor, 35 Wall St., N. Y. City. Filed Oct. 7, 1892.

7.

At a Stated Term of the District Court of the United States for the Southern District of New York, held at the Court Room in the Post Office Building in the City of New York, on the 7th day of October, 1892.

Present—Hon. Addison Brown, District Judge.

Henry Morrison

vs.

Metropolitan Steamship Company, the Steamship "H. F. Dimock," &c., William K. Vanderbilt and others.

A motion on behalf of the Metropolitan Steamship Company, claimant and respondent, to dismiss the libel herein and to set aside the process issued and the seizure of the vessel thereunder, coming on to be heard, and the affidavits of Henry Morrison, William K. Vanderbilt and Samuel B. Clarke having been submitted on behalf of the libellant, and the affidavits of Henry F. Dimock and Edward G. Benedict on behalf of the Metropolitan Steamship Company and the steamship "H. F. Dimock," and after hearing G. E. P. Howard, Esq., on behalf of the libellant, and Elihu Root, Esq., and Samuel B. Clarke, Esq., and Harrington Putnam, Esq., on behalf of the respondent William K. Vanderbilt, and Robert D. Benedict, Esq., on behalf of the Metropolitan Steamship Company, and the steamship "H. F. Dimock," now, on the said affidavits and on the copies of the proceedings in the District Court of the United States for the District of Massachusetts, in said affidavits mentioned, and on all the pleadings and proceedings in this suit, it is

Ordered, that the process issued under and by virtue of the said libel be, and the same is hereby, vacated, and that the service thereof on the respondent the Metropolitan Steamship Company be set aside; and that the said steamship "H. F. Dimock" be, and the same hereby is, released and set free from the attachment; and it is further

Ordered, adjudged and decreed that the libel of the libellant herein be, and the same is hereby, dismissed.

This order is made upon the grounds and for the reasons stated in the opinion filed this day, to which reference is hereby made as a part hereof.

October 7, 1892.

ADDISON BROWN.

[ENDORSED:]

United States District Court, Southern District of N. Y. Henry Morrison vs. Metropolitan Steamship Co., &c. Order dismissing libel. Benedict & Benedict, Proctors for Metropolitan S. S. Co., 68 Wall Street, New York, N. Y. Filed Oct. 7, 1892.

8.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

HENRY MORRISON

vs.

THE METROPOLITAN STEAMSHIP COMPANY, the Steamship "H. F. DIMOCK," W. K. VANDERBILT, and others.

IN ADMIRALTY—LIMITATION OF LIABILITY—MOTION TO DISMISS.

G. E. P. HOWARD, for the libellant.

BENEDICT & BENEDICT, for the "Dimock" and the Metropolitan Steamship Company.

ROOT & CLARKE, for W. K. Vanderbilt.

BROWN, J.:

The libellant was master of the yacht "Alva," the property of the respondent Vanderbilt, at the time of the collision between her and the steamship "H. F. Dimock" on the coast of Cape Cod, on the morning of July 24, 1892. The yacht was so damaged by the collision that she sank and became a wreck. The libel alleged that before collision she was of the value of $300,000; that her wreck was of very small value, realizing on the sale at public auction only $3,500; that the collision was by the fault of the steamer; that the libellant thereby suffered the loss of his personal property on board to the amount of $1,306.80; that divers

other persons besides the libellant and the owner of the yacht suffered loss and damage to their property on board; that the loss and damage aforesaid were without the privity or knowledge of the steamship company; that its liability is limited to the value of the steamer and her freight, which was insufficient to pay the damages sustained by the libellant and others; and that the value of the "Dimock" and freight exceeded $200,000. The relief prayed for is that the steamer be arrested and brought into court; that the whole amount of the losses and damages suffered through the collision be ascertained, as well as the value of the steamer; and that the proportionate amount of each damage claimant may be ascertained and paid from the proceeds of the ship and freight. The libel was filed on September 30th, and on the same day the steamer was arrested under process issued to the Marshal.

Such a proceeding by one creditor in behalf of all to obtain the relief afforded by the act limiting liability, though infrequent, is in accordance with the provisions of Section 4284 of the Revised Statutes, as interpreted by the Supreme Court in the case of The Scotland (105 U. S., 24, 33 to 35), this being one of the four modes in which the statute may be availed of, viz.: (1) By the simple answer of the ship-owner when sued; (2) by his libel or petition, offering a transfer of the ship to a trustee appointed by the Court under § 4285; (3) by a similar libel or petition offering, instead of a transfer of the ship, a stipulation, under Rule 54 of the Supreme Court in Admiralty, to pay her value as appraised under the order of the Court, or a deposit in Court of the amount of such appraised value; or (4) by a creditor's suit for an apportionment and *pro rata* distribution as in the present case (see The North Star, 106 U. S., 17, 27; Providence, &c., vs. Hill 109 U. S., 578, 591 to 595).

A motion is now made to dismiss the libel, upon the ground that proceedings to limit liability had already

been duly taken by the owners of the steamship in the District Court of Massachusetts on the 16th of August last, in which Court a stipulation for value was given after appraisement, and that that Court has full jurisdiction of the cause, where it is now pending, and in which an injunction order, restraining all other suits, was issued on the 17th of August; of all which the libellant had notice before this libel was filed.

If the District Court of Masssachusetts had jurisdiction to issue the restraining order, or, what is the same thing, if it had full possession of the cause by a proper appraisement and stipulation given in conformity with the 54th Rule of the Supreme Court in Admiralty, then the relief of all persons interested must be sought in that Court alone, and the present libel, being improperly filed, should be dismissed.

For the libellant it is contended that the District Court of Massachusetts never acquired full jurisdiction or authority to issue any restraining order, because it is said (in the language of *Ex parte* Slayton, 105 U. S., 451, 452), that neither the monition nor the injunction could "properly issue either under the operation of the Supreme Court rules or otherwise, until jurisdiction of the *res* had been in some way secured;" and that jurisdiction of the *res* was not secured there, because the vessel had never been arrested by, nor surrendered to, that Court, nor had any stipulation been given for its proper value, as a substitution for the *res*, under the 54th Rule, the stipulation given being upon a proceeding wholly *ex parte*, without notice of the application or of the proceeding for appraisement having been given, or attempted to be given to any creditor, although Mr. Vanderbilt, the principal creditor, was named as a defendant in that libel, and the appraisement being for less than half the value of the vessel. The appraisement of the vessel was $80,000, and of freight $2,395.33. The present libel alleges their value to have been $200,000, while

in the ship owner's petition their value was stated to be "less than $150,000." If the latter averment affords any clew, the appraisement was altogether inadequate. Such mode of procedure for appraisement, it is claimed, is not a "due appraisement," and not a compliance with the conditions of the 54th Rule, upon which alone that Court was authorized to take any further proceeding in the cause.

No doubt the creditors have a right, under the statute, to have the vessel and its full value applied upon their claims. The statute only provides in terms for a *transfer* of the vessel herself. Rule 54, in providing for the giving of a stipulation as a *substitute* for the vessel, was not designed to deprive a creditor of this substantial right, and should not, I think, be interpreted so as to compel him to accept an inferior substitute, through a purely *ex parte* appraisement, or one in which creditors can never be heard and have their proper day in court. The appraisement, as fixing the amount of liability, is a vital part of the proceeding. The vessel, if liable, is virtually the property of the creditors. The substitution of a stipulation allows the ship owner, in effect, to appropriate to himself the creditors' property, and give an obligation in place of it. To deprive the creditor finally of due hearing, and of a proper defense of his interests, in the appraisement and in fixing the amount of the substituted stipulation, which is to limit the possible amount of recovery, would be, as it seems to me, to deny him a hearing of the most vital part of the case, and a violation of the principles of common right (Windsor vs. McVeagh, 93 U. S., 274, 280). If, therefore, the original *ex parte* appraisement and stipulation were a finality, not capable of subsequent inquiry or correction by the Court on due application, if inadequate, I should have great doubt whether such an appraisement could be deemed a "due appraisement" within the meaning of the 54th Rule, so as to authorize the Court

to take the further proceedings authorized by that rule. But it is competent for the Court, I think, having had an appraisement on an *ex parte* application, to order a reappraisement and further security upon application by any creditor, showing that the previous appraisement was mistaken and inadequate, and that the duty of the appraisers had been inadequately performed (see The Union, 4 Blatch., 92, 94; Dist. Ct., Rule 55). This procedure would in most cases probably answer the ends of justice, though difficulties might occasionally arise. The vessel after an *ex parte* appraisement and stipulation given thereupon, might, as in the present case, at once depart from the jurisdiction, and she might never afterwards return, either from occupation abroad or from subsequent loss; or she might be sold, or be subjected to new liens proceedings meantime. On the other hand, as the proceeding to limit liability may be lawfully instituted within the jurisdiction where the vessel is, it would be a great embarrassment, when the creditors were all in a different jurisdiction, if no appraisement could be taken at all until absent parties were legally brought in by publication of process. Often creditors are numerous; some are not ascertained, and actual notice to all is frequently impracticable.

The matter seems properly to fall, therefore, within the domain of practice, to be regulated by the District Courts, in the absence of any express rule of the Supreme Court, as the interests of justice seem to demand. As Rule 54 of the Supreme Court does not in terms require any notice to creditors of the original appraisement and stipulation, I am not prepared to hold that the "due appraisement" provided for by that rule may not be, in the first instance, an *ex parte* one, to be supplemented thereafter, if unsatisfactory, by further inquiry on the application of the creditor.

For many years in this district it has been the practice to require the names of the principal creditors to

be stated in the petition, and a reasonable notice to be given by mail, or otherwise, to a sufficient number of creditors to afford a practical opportunity for the protection of their interests in the original appraisement and stipulation. In some other district, including that of Massachusetts, the practice seems to be otherwise. As the creditor upon application is entitled to relief for any inadequacy of an *ex parte* appraisement, and the proceeding may fairly be said to fall within the department of practice, I cannot hold the want of notice in this instance to constitute a jurisdictional defect in the appraisement and stipulation, such as to render void the subsequent order for the issuing of a monition and other subsequent steps in the cause, including the injunction against all other suits for which the 54th Rule provides, upon the analogy of the provision of the statute in the case of a transfer of the vessel, under section 4285. For this reason I must hold the prior proceeding in the Massachusetts District to be valid, and the present libel, therefore, improperly filed. It should, therefore, be dismissed. Motion granted. October 7, 1892.

A. B.

[ENDORSED :]

District Court of the United States for the Southern District of New York. Henry Morrison vs. the "H. F. Dimock" *et al.* Opinion. BROWN, J. October 7, 1892.

9.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

HENRY MORRISON

AGAINST

Steamship "HENRY F. DIMOCK" ET AL.

It appearing that there is a clerical error in the copy of the return of the Marshal of Massachusetts annexed to the affidavit of H. F. Dimock, in that the word "*Attached*" in said copy return should have been written "*Attended*;" now, upon the stipulation of G. E. P. Howard, proctor for the libellant; Root & Clarke, proctors for respondent Vanderbilt; and Benedict & Benedict, proctors for the respondent Metropolitan Steamship Company, it is

Ordered, that the said copy return be and the same hereby is corrected by substituting the word "*Attended*" for the word "*Attached*" therein; and that the Clerk of the Court be, and he is hereby, directed to make such correction by striking out said word "*At-*

tached" and substituting therefor the word "*Attended*" in said copy return.

Dated New York, October 13, 1892.

ADDISON BROWN.

We consent to entry of above order.

G. E. P. HOWARD,
Proctor for Libellant.

ROOT & CLARKE,
Proctors for Respondent Vanderbilt.

BENEDICT & BENEDICT,
Proctors Met. S. S. Co. *et al.*.

[ENDORSED:]

U. S. District Court, Southern District of N. Y. Henry Morrison vs. Steamship H. F. Dimock *el at*. Order correcting clerical error. G. E. P. Howard, Proctor for Libellants, 35 Wall St., N. Y. City. Filed October 13th, 1892.